

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA

13-CR-607 (JFB)

-against- :

United States Courthouse  
Central Islip, New York

PHILLIP A. KENNER,  
a/k/a "Philip Kenner"  
and

TOMMY C. CONSTANTINE,  
a/k/a "Tommy C. Hormovitis,

TRANSCRIPT OF TRIAL

Defendants. : May 7, 2015  
9:50 a.m.

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BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government:

LORETTA E. LYNCH  
United States Attorney  
100 Federal Plaza  
Central Islip, New York 11722  
BY: JAMES M. MISKIEWICZ  
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Assistant United States Attorneys

For the Defendant:  
Kenner:

BY: RICHARD HALEY, ESQ.  
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For the Defendant  
Constantine:

BY: ROBERT LARUSSO, ESQ.  
ANDREW OLIVERAS, ESQ.  
300 Old Country Road  
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Court Reporter:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called, appearances noted.)

4 THE COURT: All the jurors are here. Are there  
5 any issues before they come out?

6 MR. MISKIEWICZ: Not from the government.

7 MR. LA RUSSO: No, your Honor, not from  
8 Mr. Constantine.

9 MR. HALEY: No, sir.

10 THE COURT: How are you feeling, Mr. LaRusso?  
11 You still sound congested.

12 MR. LA RUSSO: I can make the day.

13 THE COURT: You have three days to recover.

14 MR. LA RUSSO: Unfortunately I won't be able to  
15 put this down.

16 THE COURT: All right. Let's bring in the jury.

17 THE CLERK: All rise.

18 (The jury is present.)

19 THE COURT: Please be seated.

20 Good morning, members of the jury. I hope  
21 everyone is doing well this morning.

22 I just want to mention to you, it's my practice  
23 at the end of each week to tell the jury where we stand in  
24 terms of my estimate.

25 I'll speak to the lawyers at the end of the day

1 today. I think we're on track in terms of my estimate of  
2 five weeks, but I like to give the jury an update at the  
3 end of each week.

4 We will continue now. As you'll recall,  
5 Mr. Peca is on cross-examination by Mr. La Russo.

6 Mr. Peca, I remind you that you're still under  
7 oath; do you understand?

8 THE WITNESS: I do.

9

10 MICHAEL PECA,

11 called as a witness, having been previously  
12 duly sworn, was examined and testified further  
13 as follows:

14

15 CROSS-EXAMINATION

16 BY MR. LA RUSSO:

17 Q. Good morning, Mr. Peca. How are you?

18 A. Good morning.

19 Q. Mr. Peca, I'm just going to ask you a few questions  
20 if I may.

21 This is Government's Exhibit 757. We talked  
22 about other aspects of the settlement fund. I'm not going  
23 to review any of those.

24 I'm going to refer you to this action where it  
25 says PR agency fees.

M. Peca - Cross/LaRusso

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1 A. Okay.

2 Q. You also mentioned yesterday that there was some  
3 interest in encountering some adverse publicity that was  
4 part of the overall purpose of the settlement fund; do you  
5 recall that?

6 A. I do.

7 Q. Do you remember, after you had agreed to contribute  
8 to the settlement fund, actually corresponding with  
9 Mr. Constantine regarding some positive and negative  
10 articles that were appearing in the paper?

11 A. I don't recall.

12 (Pause in proceedings.)

13 Q. I'm going to show you what's been marked  
14 Mr. Constantine Exhibit C-29, and three separate pages I  
15 have marked C-29-A. Could you take a look at those.

16 (Pause in proceedings.)

17 A. Okay.

18 Q. Directing your attention first to C-29, do you  
19 recognize that as an e-mail you received from  
20 Mr. Constantine regarding the area of publicity we have  
21 been discussing?

22 A. I do see the e-mail, yes.

23 Q. This is a group e-mail. You're part of the group  
24 e-mail; is that correct?

25 A. Correct.

**M. Peca - Cross/LaRusso**

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1 Q. That's dated June 18, 2009?

2 A. Yes, it is.

3 Q. That would be approximately a month after the meeting  
4 that you had with Mr. Constantine and Mr. Kenner?

5 A. Correct.

6 Q. C-29-A, do you recognize that?

7 A. I may have read it years ago. I don't.

8 Q. You don't recognize anything about the article?

9 A. I remember reading several articles. I imagine this  
10 could possibly be one.

11 Q. In this particular e-mail, which I'll show the jury  
12 in a few minutes, do you recall this e-mail referencing a  
13 particular article?

14 A. Yes.

15 Q. Looking at 29-C, does that appear to be the article  
16 that was referenced?

17 THE COURT: 29-A.

18 MR. LA RUSSO: 29-A.

19 Q. Does that appear to be the article that was  
20 referenced in the e-mail Constantine Exhibit 29?

21 A. Sure.

22 MR. LA RUSSO: Your Honor, I'm just going to  
23 introduce C-29.

24 THE COURT: Any objection?

25 MR. MISKIEWICZ: No objection.

**M. Peca - Cross/LaRusso**

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1 MR. HALEY: May I just see it, your Honor?

2 THE COURT: Show it to Mr. Haley.

3 MR. LA RUSSO: I'm sorry, Mr. Haley.

4 (Pause in proceedings.)

5 MR. HALEY: No objection, Judge.

6 THE COURT: So C-29 is admitted, not C-29-A.

7 MR. LA RUSSO: That's correct, your Honor, at  
8 this time.

9 (Defense Exhibit C-29 in evidence.)

10 MR. LA RUSSO: Your Honor, I'm displaying it to  
11 the jury at this time.

12 Q. For the record, Mr. Peca, this is the group e-mail we  
13 were referring to?

14 A. Yes, it was.

15 Q. And your e-mail address is contained in there?

16 A. Yes, correct.

17 Q. This is the e-mail from Mr. Constantine to the group  
18 regarding this particular article that's linked; is that  
19 correct?

20 A. Yes.

21 Q. It's June 18, 2009?

22 A. Correct.

23 Q. Now, this wasn't the only communication you got from  
24 Mr. Constantine regarding aspects of the case regarding  
25 publicity, media attention?

**M. Peca - Cross/LaRusso**

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1 A. Probably not.

2 Q. I show you Mr. Constantine's Exhibit C-30.

3 Do you recognize that?

4 A. Yes.

5 Q. Is this an e-mail that you actually sent to  
6 Mr. Constantine?

7 A. My wife and I might have.

8 Q. And you're familiar with this?

9 A. Yes.

10 Q. This is one of the e-mail communications that you and  
11 Mr. Constantine had regarding publicity?

12 A. I remember having correspondence with Mr. Constantine  
13 regarding articles about what was going on.

14 Q. In regards to what?

15 A. In regards to any social or verbal dispute.

16 MR. LA RUSSO: Your Honor, may I ask that C-30  
17 be received at this time?

18 MR. MISKIEWICZ: No objection.

19 MR. HALEY: No objection.

20 THE COURT: C-30 is admitted.

21 (Defense Exhibit C-30 in evidence.)

22 BY MR. LA RUSSO:

23 Q. The subject of this e-mail is good question by Rem  
24 Murray.

25 Do you know who Rem Murray is?

M. Peca - Cross/LaRusso

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1 A. I do.

2 Q. Do you know what the good question was by Rem Murray  
3 when you think back?

4 A. I don't recall.

5 Q. This e-mail is February 21st, 2010; is that correct?

6 A. Yes, it is.

7 Q. It's from you to Mr. Constantine?

8 A. It is.

9 Q. I'll read the first line.

10 Two things in response to that.

11 Did our response get published yet in W Post or  
12 other credible sources/media outlets, and what about the  
13 point that he said publicly he'd pay us back?

14 Can't we somehow legally hold him to that?

15 I read that correctly?

16 A. You did.

17 Q. Could you explain what you understood, what you were  
18 trying to communicate to Mr. Constantine in this e-mail?

19 A. I believe in an article Mr. Jowdy made reference to  
20 some of the hockey players in dispute with him.

21 Q. When you say two things in response to that, that  
22 meaning the article that appeared in the paper; is that  
23 correct?

24 A. Either that or Rem's good questions. I can't recall.

25 Q. You then say:



**M. Peca - Cross/LaRusso**

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1 Did our response get published in the W Post or  
2 other credible sources/media outlets.

3 What were you referring to? What were you  
4 trying to communicate to Mr. Constantine?

5 A. Any response where Mr. Jowdy indicated possibly  
6 paying some of the players back.

7 Q. And this particular word, our response, meaning the  
8 media response to that, that would be favorable to the  
9 side that you and Mr. Constantine were advocating?

10 A. And the other players.

11 Q. And the other players, that is correct.

12 Now, we've been talking about Mr. Jowdy. Let me  
13 ask a couple of questions.

14 As part of the Global Settlement Fund, do you  
15 recall two lawsuits being filed against Mr. Jowdy?

16 A. From what I remember, there were several lawsuits  
17 from various different people against Mr. Jowdy.

18 Q. And, of course, those were legal fees that you knew  
19 were part of the proper expenses of the Global Settlement  
20 Fund; is that correct?

21 A. There was one that I think that I was going to be a  
22 part of which is the only one I was aware of.

23 Q. You did testify yesterday, if I'm not mistaken, that  
24 you attended a mediation in California?

25 A. Correct.

M. Peca - Cross/LaRusso

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1 Q. I'm trying to clarify.

2 Is that mediation related to one of the suits  
3 that was filed against Mr. Jowdy?

4 A. I believe so.

5 Q. You also told us it was at that mediation you met  
6 Mr. Constantine for the second time?

7 A. Correct.

8 Q. And had a brief personal conversation with him which  
9 you told us about, correct?

10 A. Correct.

11 Q. This was a Court ordered mediation, right, with  
12 regards to the dispute with Mr. Jowdy?

13 A. I imagine. I don't remember that.

14 Q. It was all day?

15 A. It was pretty much most of the day, yes.

16 Q. You were attending with a number of other hockey  
17 players?

18 A. And one of the lawyers, yes.

19 Q. Mr. Constantine was there?

20 A. He was.

21 Q. And was Mr. Ron Richards there as well?

22 A. He was.

23 Q. He was the lawyer for you and the other hockey  
24 players; is that correct?

25 A. That's what we were told, yes.

**M. Peca - Cross/LaRusso**

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1 Q. And Mr. Constantine, he was not a plaintiff in the  
2 suit, was he?

3 A. He was not.

4 Q. He was there, as you say, to help expedite or to  
5 bring about the settlement?

6 A. That's what he said he was there for, yes.

7 Q. If I ask you to repeat it, I'm not trying to  
8 embarrass you. I want to make sure the record is clear on  
9 it, okay?

10 A. Okay.

11 Q. Thank you, sir.

12 Did the meeting result in a settlement, if you  
13 recall?

14 A. No.

15 Q. Did there come a time after that meeting that a  
16 settlement was tentatively reached?

17 A. Not that I'm aware of.

18 Q. Do you remember at all discussions about a potential  
19 settlement with Mr. Jowdy?

20 A. I do not.

21 Q. Do you recall any discussions amongst you and any  
22 other participants that a settlement was rejected because  
23 a player did not want to publicly acknowledge Mr. Jowdy  
24 did nothing wrong, do you have any recollection of that?

25 A. I don't recall that.

**M. Peca - Cross/LaRusso**

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1 Q. Now, do you have any specific recollection today  
2 about the Global Settlement Fund's involvement in  
3 resolving issues with Mr. Jowdy's aviation company called  
4 Diamante Air?

5 A. No.

6 Q. Mr. Peca, C-31 for identification, please take the  
7 opportunity just to review that for us, please.

8 (Pause in proceedings.)

9 A. Okay.

10 Q. Do you recognize that as a group e-mail which  
11 includes you?

12 A. It does include me, yes.

13 Q. This was July 27 of 2009?

14 A. Correct.

15 Q. Do you have a recollection -- is this one of the  
16 e-mails that Mr. Constantine would send to the group in  
17 regards to updates on the global settlement?

18 A. It appears to be, yes.

19 MR. LA RUSSO: Your Honor, may I ask this be  
20 received as Mr. Constantine's 31?

21 MR. MISKIEWICZ: May we approach?

22 THE COURT: Yes.

23 (Continued on next page.)  
24  
25

**M. Peca - Cross/LaRusso**

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1 (The following takes place at sidebar.)

2 MR. MISKIEWICZ: I object to hearsay.

3 THE COURT: This is the same issue as yesterday.

4 In a fraud case the state of mind of the  
5 defendant is obviously a relevant issue in the case, so  
6 what information Mr. Constantine was providing to his  
7 victims in the case, as well as for purposes of showing  
8 what representation he was making to them, whether he was  
9 giving complete information or incomplete information, is  
10 all something that the jury is entitled to see and  
11 Mr. Constantine is entitled to argue. So if the  
12 government believes that any representations in here are  
13 inaccurate, you can prove that to the jury. He's entitled  
14 to put forth what his communications were back and forth  
15 with the victims, okay?

16 MR. MISKIEWICZ: Understood. Thank you.

17 MR. LA RUSSO: Thank you, your Honor.

18 (Continued on next page.)  
19  
20  
21  
22  
23  
24  
25

**M. Peca - Cross/LaRusso**

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1 (The following takes place in open court.)

2 THE COURT: Mr. Haley, do you have any  
3 objection?

4 MR. HALEY: No, sir.

5 THE COURT: C-31 is admitted.

6 (Defense Exhibit C-31 in evidence.)

7 BY MR. LA RUSSO:

8 Q. Mr. Peca, again, this is a group e-mail.

9 The first paragraph contains your e-mail  
10 address; is that correct?

11 A. Yes.

12 Q. It's from Mr. Constantine?

13 A. Yes.

14 Q. And it's date July 27, 2009?

15 A. It is.

16 Q. If I may, it says all underneath the group e-mail.

17 As you may recall through our discussions, one  
18 of the issues that was recently resolved as part of our  
19 global settlement effort was Diamante Air, which involved  
20 several airplanes and a lawsuit which was filed by the  
21 bank against Phil and those of you who invested in the  
22 company.

23 We have reacquired the airplane and refurbished  
24 it to the highest standards and all is well with respect  
25 to this entity.

**M. Peca - Cross/LaRusso**

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1                   It is the same solution that we hope to provide  
2                   with all the other investments made by Mr. Jowdy.

3                   You were not --

4                   THE COURT: It says made with not by.

5                   MR. LA RUSSO: With Mr. Jowdy.

6                   Q. Were you part of Diamante Air?

7                   A. I was not.

8                   Q. But this particular part of the e-mail is referencing  
9                   acquiring assets; is that right?

10                  A. It appears so.

11                  Q. That was part of what was discussed in the original  
12                  global settlement approval e-mail that we talked about  
13                  acquiring and securing and preserving assets; is that  
14                  correct?

15                  A. Yes, but not us investing in the stuff, no.

16                  Q. But in this particular case he's referencing this as  
17                  part of the global settlement at least in this e-mail?

18                  A. He is, yes.

19                  Q. Just a few other points.

20                         As I said -- I'm reading in the second  
21                         paragraph -- some of you invested and were involved in  
22                         this entity and some of you were not.

23                         Therefore, this solution may not mean much to  
24                         some of you. But to those of you who were involved, it is  
25                         obviously very important and a great victory for our team.

**M. Peca - Cross/LaRusso**

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1 In any case, as we discussed, all of us who  
2 invested in the Global Settlement Fund are all banding  
3 together and solving everyone's related investment issues  
4 collectively and, therefore, everyone will be a  
5 beneficiary of the various solutions that we accomplish,  
6 regardless of whether or not one was originally involved  
7 in that particular investment.

8 You were one that was not involved in that  
9 particular investment; is that correct?

10 A. Correct.

11 Q. He then continues.

12 You may also recall me saying that the airplane  
13 issue was obviously not nearly as important as say the  
14 Cabo deal or the Del Mar deal.

15 And that's the deal you were in; is that  
16 correct?

17 A. Correct.

18 Q. So this would be a paragraph you would have paid  
19 particular attention to; is that right?

20 A. Yes.

21 Q. The Cabo deal or the Del Mar deal, and that this deal  
22 should be considered more of a luxury than a business  
23 endeavor.

24 In any case, for those of you that were on the  
25 hook on this one, you are no longer on the hook. And for



**M. Peca - Cross/LaRusso**

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1 those of you that had nothing to do with this company, or  
2 the problems that arose as a result of Jowdy's  
3 mismanagement, you now also own a small interest in a very  
4 nice jet along with the rest of us.

5 That's what Mr. Constantine is reporting to  
6 those of you who were not involved as owners in the  
7 Diamante Air; is that correct?

8 A. That's what it says, yes.

9 Q. He's saying you're now going to get a percentage of  
10 the interest in these jets that are being acquired in the  
11 Global Settlement Fund?

12 A. He did say that. We never received any.

13 Q. Let me ask you.

14 Did you ever write or e-mail back to  
15 Mr. Constantine any comments regarding what he's reporting  
16 to you?

17 A. We might have. It's so long ago I don't recall. I  
18 imagine we did.

19 Q. If you had something like that, you would have  
20 provided it to the government -- withdrawn.

21 Did the government ask you to provide that?

22 A. No.

23 Q. Lastly, there are two key points to consider here.

24 (A) because some of you live in an area where it  
25 is logistically impossible to take advantage of your

**M. Peca - Cross/LaRusso**

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1 ownership interest in the airplane, you may not care about  
2 this particular asset very much.

3 But the good news for all of you is that  
4 regardless of where you live, your involvement in this  
5 entity will cost you absolutely nothing unless you elect  
6 to use the airplane, in which case you will pay the  
7 standard fuel costs, pilot fees, et cetera. There will be  
8 no cost for the use of the airplane itself, because you  
9 already own it.

10 If any of you want to use it, just call me and I  
11 will make the arrangements.

12 I will also be providing you with a website,  
13 user name and password, so you can track where the  
14 airplane is 24/7/365.

15 Again, unless you use it, it will cost you  
16 nothing. I am responsible for the maintenance, insurance,  
17 storage, et cetera.

18 (B) at some point I am planning on buying some  
19 or all of you out of the airplane, and at that point you  
20 will recoup some or all of this investment.

21 Do you remember that, Mr. Peca?

22 A. I do.

23 Q. Did you ever take advantage of the opportunities to  
24 use the jet?

25 A. No, sir.

**M. Peca - Cross/LaRusso**

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1 Q. For those of you that invested in Diamante Air  
2 originally, this solution and your current ownership of  
3 this airplane, does not alleviate Jowdy's and Thalmann's  
4 responsibility for their mismanagement of the original  
5 deal, and we intend to pursue every legal and financial  
6 remedy to recover your losses along with our current  
7 efforts against Jowdy.

8 This is the last lawsuit that is to be filed.  
9 This solution simply got the airplane itself and the bank  
10 issues (loan/personal guarantees/lawsuit) sorted out.

11 Did you know what Mr. Constantine was referring  
12 to at that point?

13 A. No.

14 Q. Finally, this is just one of the investment  
15 acquisitions and business solutions that overlaid over the  
16 legal strategy that we presented as part of the global  
17 settlement plan.

18 I have attached the documentation for all of you  
19 to sign for your respective share of the ownership in the  
20 airplane company.

21 It is a very basic operating agreement, but you  
22 should definitely read it, sign it and send it back to me  
23 at your convenience.

24 Please do not hesitate to call me if you have  
25 any questions.

**M. Peca - Cross/LaRusso**

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1           You will be receiving a similar agreement for  
2           the ownership interest that we acquire from the bad guys  
3           for their Eufora shares as well as the Avalon hangar  
4           building which is actually where the plane is kept and  
5           where Eufora is headquartered.

6           I have also attached some photos of the plane.

7           Thank you all for your continued support and I  
8           look forward to knocking out the next two solutions which  
9           are obviously more significant issues for all of us.

10          You have no recollection of specifically  
11         responding to anything that was in this e-mail; do you?

12         A.    No.

13         Q.    When I say responding, sending an e-mail to  
14         Mr. Constantine to further explain or provide additional  
15         information?

16         A.    No.

17         Q.    To stay on the subject of the Global Settlement Fund,  
18         if I could, during the period after your meeting with  
19         Mr. Constantine and Mr. Kenner, did Mr. Constantine  
20         arrange for conference calls for all of the investors in  
21         the Global Settlement Fund to participate in a group  
22         discussion regarding the status of the Global Settlement  
23         Fund, the issues that had to be dealt with?

24         A.    I don't remember.

25         Q.    I'm going to show you collectively if I could try and

**M. Peca - Cross/LaRusso**

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1 save some time, four documents, and I'm trying to stay  
2 away from you as much as I can, C-33 for identification,  
3 C-34 for identification, C-35 and C-36.

4 Could you take a look at those four documents  
5 for me, please.

6 (Pause in proceedings.)

7 A. Okay.

8 Q. Do you recognize these as group e-mails from  
9 Mr. Constantine to the participants of the Global  
10 Settlement Fund which includes you?

11 A. Yes, sir.

12 Q. Do you remember, are these four notices of conference  
13 calls that took place during the period of time after you  
14 first agreed to participate in the settlement fund?

15 A. That's what they look like, yes.

16 Q. Actually they reference a conference call 1,  
17 conference call 2, conference call 3, conference call 4;  
18 is that correct?

19 A. They do.

20 Q. And then Defendant's Exhibit C-32, do you recognize  
21 that group e-mail?

22 A. I don't recall that, no.

23 Q. Do you recognize it as an e-mail you received along  
24 with conference call e-mails discussing issues relative to  
25 the settlement fund referencing the names down at the

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1 bottom?

2 A. It's so long ago I can't recall.

3 Q. Could that possibly be one of the ones you recall  
4 receiving?

5 A. I guess it could be possible.

6 MR. LA RUSSO: At this time, your Honor, may I  
7 ask that exhibits C-33 -- C-32 through C-36 be received?

8 MR. MISKIEWICZ: No objection.

9 MR. HALEY: No objection.

10 THE COURT: C-32 through C-36 are admitted.

11 (Defense Exhibits C-32 through C-36 in  
12 evidence.)

13 MR. LA RUSSO: Your Honor, I will display  
14 quickly the first one which is C-33.

15 It's captioned conference call, dated June 10,  
16 2009.

17 Q. Mr. Peca, that's your highlighted e-mail address?

18 A. Yes.

19 Q. It says:

20 All: Our call is scheduled for Sunday at 11  
21 a.m. PST, Los Angeles time.

22 Please read all four steps below.

23 And then directions are given how to participate  
24 in the call; is that correct?

25 A. That is correct.

**M. Peca - Cross/LaRusso**

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1 Q. Did you participate in any of these four calls?

2 A. I think I did. I'm not sure it was all of them. I  
3 know I did at least one.

4 Q. C-34 is conference call number 2?

5 A. Yes.

6 Q. This is an e-mail from Mr. Constantine to the group  
7 which includes you; is that correct, Mr. Peca?

8 A. Correct.

9 Q. June 25, 2009, correct?

10 A. Correct.

11 Q. And this one says:

12 All:

13 We have a call scheduled for today at 4 p.m.  
14 PST, Los Angeles time, to discuss the progress of all of  
15 the cases.

16 This is about the Global Settlement Fund; is  
17 that right?

18 A. I think so.

19 Q. Again, directions on how to participate in the call?

20 A. Correct.

21 Q. C-35, this is conference call 3, and again from  
22 Mr. Constantine to the group who are part of the Global  
23 Settlement Fund, including yourself; is that right?

24 A. Correct.

25 Q. And it's dated August 19, 2009, correct?

**M. Peca - Cross/LaRusso**

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1 A. Yes, sir.

2 Q. And again it reads similarly all, we have a call  
3 scheduled for tomorrow at 4 p.m. PST, Los Angeles time, to  
4 discuss the progress of all of the cases. Please try to  
5 make this call. We have a lot of progress to discuss,  
6 correct?

7 A. That's what it says, yes.

8 Q. And again instructions on how to participate.

9 And then conference call 4, this is dated  
10 October 22, 2009.

11 Actually this one starts off with a response  
12 from your e-mail address; is that correct?

13 A. Yes, it does.

14 Q. It says to Mr. Constantine, we understand?

15 A. Correct.

16 Q. Do you remember this one in particular?

17 A. No.

18 Q. But it follows an e-mail from Mr. Constantine to you.  
19 It states, on October 22nd, 2009, subject, conference call  
20 4.

21 I am just waiting for a few more guys to respond  
22 and I will let you know.

23 If possible, I will move the call to accommodate  
24 your schedule. You can probably imagine what it's like  
25 rounding up 20 guys in multiple time zones globally.



M. Peca - Cross/LaRusso

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1 Keep you posted.

2 Tommy Constantine.

3 Do you see that?

4 A. Yes.

5 Q. Do you have a recollection now of engaging in  
6 conversation so you participated in one of those  
7 conference calls?

8 A. Yeah. It was a long time ago. I vaguely remember.

9 Q. And there's some additional aspects. This is in  
10 evidence. It can be reviewed later.

11 MR. LA RUSSO: One second, if I may, your Honor.  
12 (Pause in proceedings.)

13 BY MR. LA RUSSO:

14 Q. The last exhibit that was introduced, this is C-32 in  
15 evidence. It's from Tommy Constantine. There are several  
16 e-mail addresses and it says all. Down at the bottom it  
17 lists all of the individuals; do you see that?

18 A. Yes.

19 Q. You're listed the fourth name down; is that correct?

20 A. Correct.

21 Q. All:

22 I am arranging a very important conference call  
23 with all of you (and your significant others ) to explain  
24 in detail the next steps in the strategy to recover all  
25 investments (plus interest) made by you into Ken Jowdy's

**M. Peca - Cross/LaRusso**

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1 owned and controlled entities.

2 There is a legal aspect and a media aspect which  
3 you all need to be very aware of and approve before we can  
4 execute. We want to take these steps no later than  
5 Monday, so time is of the essence.

6 For the sake of being efficient, I would like to  
7 use the call primarily to give you guys all the pertinent  
8 information. You may want to take notes. Then any or all  
9 of you can reach out to me with any questions  
10 independently if you wish.

11 I am hoping to do the call Saturday or Sunday.  
12 It will take 15 minutes at the most.

13 Please respond to this e-mail either today in  
14 the afternoon is okay and I will provide the exact time  
15 and a call-in number in a subsequent e-mail.

16 FYI, here is a list of everyone that will be on  
17 the call.

18 Thank you all very much for your support.

19 This particular e-mail by Mr. Constantine is  
20 offering the opportunity for anyone to communicate with  
21 him any concerns they had; is that correct?

22 A. Correct.

23 Q. And that was offered to you on a number of occasions;  
24 is that correct?

25 A. Yes, sir.

**M. Peca - Cross/LaRusso**

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1 Q. And if you did take advantage, you would have  
2 e-mailed him; is that correct?

3 A. Yes.

4 Q. Did you do that?

5 A. I may have. I don't remember. It's six years ago.

6 Q. By the way, there were other assets that were  
7 mentioned.

8 Do you recall Avalon Air Park?

9 A. I remember it being mentioned, yes.

10 Q. You, yourself, was invested in Eufora?

11 A. Yes.

12 Q. Did you ever take the opportunity to go visit the air  
13 park and/or the Eufora facilities?

14 A. I did not.

15 Q. I would like to just go on to another subject for a  
16 few minutes.

17 You testified I know with regards to the grand  
18 jury appearance in the Southern District of New York?

19 A. Correct.

20 Q. Before you made that appearance, you were served with  
21 a grand jury subpoena personally; is that correct?

22 A. Yes, sir.

23 Q. And would it be fair to say that that would have been  
24 sometime in March 2011?

25 A. I imagine so.

**M. Peca - Cross/LaRusso**

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1 Q. As you said, there were two others who likewise  
2 received subpoenas to testify in the Southern District of  
3 New York?

4 A. There were.

5 Q. A Turner Stevenson and a Darryl Sydor, correct?

6 A. Yes.

7 Q. You told us that you hired Mr. Richards and paid him  
8 \$8,000; is that correct?

9 A. Correct.

10 Q. And you also told us, I believe this was on direct  
11 examination, that the day prior to your appearance  
12 Mr. Richards prepared you over the telephone; is that  
13 correct?

14 A. The day before the grand jury?

15 Q. I'm sorry, yes.

16 A. It was in his hotel room.

17 Q. In whose hotel room?

18 A. Ron Richards'.

19 Q. Was he present at the time?

20 A. Yes.

21 Q. Were there two other players that received subpoenas  
22 who were also present?

23 A. Yes, they were.

24 Q. And Mr. Kenner was on the telephone?

25 A. Correct.

M. Peca - Cross/LaRusso

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1 Q. And he was participating by that means; is that  
2 correct?

3 A. Correct.

4 Q. I'm not going to go through the whole thing, just  
5 highlighting some aspects of it.

6 The main focus of the meeting was to reinforce I  
7 believe you said the need to all be on kind of the same  
8 page?

9 A. So much time had gone by that so many things were  
10 going on, that there were just -- it's hard to remember  
11 everything, so it was to help kind of maybe clear up some  
12 of the blurred areas.

13 Q. You were then provided with some information,  
14 correct?

15 A. Correct.

16 Q. To try and refresh your recollection?

17 A. Correct.

18 Q. And isn't it true that when you first described this  
19 to the FBI, this meeting, you felt -- you told them you  
20 felt uncomfortable answering questions about the Jowdy  
21 loan during the grand jury; do you remember that?

22 A. I do.

23 Q. And you were uncomfortable why?

24 A. Because it was an uncomfortable subject.

25 Q. Was it the subject itself or the answers you were

M. Peca - Cross/LaRusso

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1 giving?

2 A. The answers I gave were truthful, but they were  
3 uncomfortable all the same.

4 Q. Just so I can try and understand your being  
5 uncomfortable, it was uncomfortable because you had no  
6 specific knowledge of where the money went, that is the  
7 money to Jowdy, money you invested in Hawaii, but there  
8 were discussions by the parties present that it went to  
9 him?

10 A. Correct.

11 Q. You were uncomfortable because of what you knew and  
12 what people were telling you happened; is that right?

13 A. Correct.

14 Q. Now, did Mr. Constantine have anything to do with  
15 your participation in that grand jury?

16 A. No, he did not.

17 Q. Did Mr. Constantine have anything to do with your  
18 decision to hire Ron Richards for the grand jury?

19 A. No, he did not.

20 Q. Isn't it true that at the time you were asked to  
21 appear before the grand jury, you were not even  
22 communicating with Mr. Constantine; is that correct?

23 A. That is correct.

24 Q. You kind of had a falling out I believe, is that  
25 right?

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1 A. Yes, sir.

2 Q. Actually, you had sued Mr. Constantine?

3 A. That is not correct.

4 Q. Were you part of a group that sued Mr. Constantine?

5 A. It may have been. I think there was a thing  
6 involving Mr. Stolper. I didn't know how far it had  
7 gotten.

8 Q. Could you tell us, when you say involving  
9 Mr. Stolper, what do you mean by that?

10 A. Mr. Stolper was an attorney in New York City.

11 Q. Did you meet with Mr. Stolper?

12 A. Not about the lawsuit, no.

13 Q. Who were the parties that were -- withdrawn.

14 You say you did not hire him; is that correct?

15 A. Correct.

16 Q. Do you know of any group who did in fact hire him?

17 A. Mr. Kenner is the one that found the lawyer.

18 Q. Do you remember any of the other individuals  
19 involved?

20 A. There were several people involved.

21 Q. Mr. Gaarn?

22 A. I believe so, but I wasn't 100 percent sure if  
23 Mr. Gaarn was involved.

24 Q. C.R. Gentry?

25 A. I heard the name, yes.

M. Peca - Cross/LaRusso

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1 Q. Mr. John Kaiser?

2 A. Yes.

3 Q. Former police officer?

4 A. Yes.

5 Q. A man by the name of Nick Privitello?

6 A. I heard that name, yes, but I don't know for sure.

7 Q. An individual by the name of Theodore Hughes?

8 A. I don't recognize the name.

9 Q. Ethel Kaiser?

10 A. I don't recognize that name.

11 Q. Robert Rizzi?

12 A. I remember that name.

13 Q. In your involvement, and I know you did not hire him,  
14 you did participate in discussion regarding a potential  
15 suit; is that correct, against Mr. Constantine?

16 A. Correct.

17 Q. And were you asked to participate in a suit by one or  
18 more of those individuals?

19 A. By Mr. Kenner.

20 Q. Was it your understanding that this suit was to buy a  
21 loan and take over the assets of Eufora?

22 A. I know it had to do with Eufora. I wasn't sure of  
23 all of the details of it.

24 Q. Do you know if in fact a lawsuit was filed?

25 A. I believe one was, yes.



M. Peca - Cross/LaRusso

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1 Q. And you know Mr. Stolper was hired by this group; is  
2 that correct?

3 A. Correct.

4 Q. Do you know what he was asking for a fee and what he  
5 got as a fee?

6 A. I believe it was on contingency.

7 Q. He was asking for a contingency; is that correct?

8 A. From what I remember.

9 Q. That means -- did you understand that to mean that  
10 whatever recovery is made from the suit, he will get a  
11 percentage of that recovery?

12 A. That is what that means, yes.

13 Q. Do you know what the percentage was that he was  
14 seeking?

15 A. I was not aware of that.

16 Q. And at this point in time Eufora had, as you recall,  
17 a valid -- the parties were interested in acquiring Eufora  
18 and the loan that Eufora had; is that right?

19 A. I believe so.

20 Q. You also know that this lawsuit failed; are you aware  
21 of that?

22 A. I'm aware of that.

23 Q. Do you know the objective in that lawsuit?

24 A. No.

25 Q. Did you ever hear the word hostile takeover?

**M. Peca - Cross/LaRusso**

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1 A. Yes.

2 Q. Acquiring the assets of the company?

3 A. I've heard of that, yeah.

4 Q. And discharging the present management, takeover,  
5 right?

6 A. Okay.

7 Q. In effect, that's what you were being asked to join  
8 in this suit, to takeover Eufora from Mr. Constantine; is  
9 that correct?

10 A. Yeah, but it wasn't described to me that way.

11 Q. When you say it wasn't described, your conversations  
12 were with whom?

13 A. Mr. Kenner.

14 Q. And the part that you remember is that there was a  
15 loan that Eufora had; is that right, and they wanted to  
16 take it over?

17 A. From what I remember, it was -- the way it was  
18 described to me is Tommy was using Eufora as his own bank  
19 account and they wanted to remove him and takeover the  
20 company.

21 Q. That was the allegations that were being made by  
22 other people who filed a suit; is that correct?

23 A. Correct.

24 Q. And did you ever talk to Mr. Constantine about this?

25 A. No.

**M. Peca - Cross/LaRusso**

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1 Q. You had no discussions with him about the suit and  
2 what the suit was about?

3 A. Even if I did, I don't know if there would be any  
4 answers given. There was a suit.

5 Q. You know there was a breakdown in communications  
6 between you and Mr. Constantine, correct?

7 A. Correct.

8 Q. And we know that from the e-mail communication  
9 regarding the Global Settlement Fund, it was a pretty open  
10 communication going on; is that right?

11 A. There was early on, yes.

12 Q. Would it be fair to say that this particular suit  
13 brought an end to those communications?

14 A. It wasn't involving the suit. The suit had nothing  
15 to do with it.

16 Q. Was it a personal reason between you and him?

17 A. Yes, it was.

18 Q. In regards to this particular suit, did  
19 Mr. Constantine explain that you were aligned with these  
20 individuals trying to takeover the company and he wasn't  
21 going to have any further discussions with you?

22 A. That probably would be accurate.

23 Q. Did Mr. Constantine ever tell you that the people who  
24 were involved in this suit, or some involved in the suit,  
25 had actually misappropriated money from Eufora and from

**M. Peca - Cross/LaRusso**

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1 some of the investors?

2 A. I wasn't told that, no.

3 Q. Did he ever discuss with you, Mr. Gaarn and  
4 Mr. Gentry and others, selling shares of stock for their  
5 own personal benefit to the detriment of the hockey  
6 players?

7 A. I do recall. Something along those lines, yes.

8 Q. And was that in a telephone call or in a face-to-face  
9 meeting with Mr. Constantine?

10 A. I don't recall.

11 Q. And what you do remember is that Mr. Constantine was  
12 telling you that there are a group of individuals,  
13 including Mr. Gaarn and Mr. Gentry, that had committed  
14 those crimes and he was not going to have anything to do  
15 with that; is that correct?

16 A. Yeah, I believe that may have been during a  
17 conference call that was held with shareholders in July I  
18 think of 2010 or '11.

19 Q. Was it August 21st, 2010?

20 A. I remember a conference call with shareholders in a  
21 car ride before July 4th. I don't recall another  
22 conversation.

23 Q. Mr. Constantine spoke to and engaged all of the  
24 Eufora, or as many as he could get together, and gave them  
25 an update on what was happening?

M. Peca - Cross/LaRusso

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1 A. Yes.

2 Q. You participated in that?

3 A. Yes.

4 Q. And in that you learned from Mr. Constantine the  
5 activities of the individuals I just described?

6 A. Allegations were made, correct.

7 Q. And amongst them were Mr. Gaarn and Mr. Gentry; is  
8 that correct?

9 A. Correct.

10 Q. Mr. Kenner?

11 A. Yes, sir.

12 Q. At that point in time would it be fair to say that  
13 you were aligned with these individuals?

14 A. Fair to say.

15 Q. These are the same individuals that were behind the  
16 efforts to takeover Eufora?

17 A. Apparently.

18 Q. Do you have a recollection, back around December of  
19 2009, somewhere around October 2010, these same  
20 individuals, with your knowledge, being aware, secretly,  
21 without Mr. Constantine's awareness, try and contact  
22 Eufora's lenders to try and buy the loan before they  
23 publicly sought to do so?

24 A. I wasn't aware of that.

25 Q. You know that some of the assets of Eufora were the

**M. Peca - Cross/LaRusso**

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1 patents, correct?

2 A. Correct.

3 Q. And that those patents were pledged as collateral for  
4 the loans, correct?

5 A. They were?

6 Q. Did you know?

7 A. I did not.

8 Q. Were you aware that this group was secretly trying to  
9 purchase the loan, foreclose on the company, and thus  
10 strip control away from Mr. Constantine and the assets  
11 from some of the other shareholders?

12 A. I know it was a battle. All of the intricate details  
13 I'm not very familiar with.

14 Q. Before you were advised, before the troubles between  
15 you and Mr. Constantine and the fallout of ceased  
16 communications, you really had no difficulty in reaching  
17 out to Mr. Constantine if you wished to; is that correct?

18 A. Not at all.

19 Q. Quite candidly, he was keeping you and the other  
20 investors apprised of what was happening?

21 A. Yes.

22 Q. Through the group e-mails?

23 MR. MISKIEWICZ: No objection.

24 MR. LA RUSSO: Your Honor, just a few moments.

25 (Pause in proceedings.)

**M. Peca - Cross/LaRusso**

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1 MR. LA RUSSO: Your Honor, I have one other area  
2 while Mr. Haley has a chance to look at those.

3 BY MR. LA RUSSO:

4 Q. Mr. Peca, just a couple more questions if I could.

5 Did you invest in Mr. Jowdy's Diamante Del Mar  
6 project?

7 A. Yes, sir.

8 Q. How much did you invest in Mr. Jowdy's Del Mar  
9 project?

10 A. \$500,000.

11 Q. And you are aware that there were other hockey  
12 players that invested in Del Mar as well?

13 A. Yes, sir.

14 Q. Do you know what the total investment you and the  
15 hockey players made to that Del Mar project?

16 A. I'm not aware of that number.

17 Q. Do you still own those shares?

18 A. Good question.

19 Q. You're not sure whether you do or you don't?

20 A. Correct.

21 Q. Well, let's assume you do own shares.

22 Are you aware of what actually happened to that  
23 Del Mar project?

24 A. I'm not.

25 Q. Is that still a viable project?

**M. Peca - Cross/LaRusso**

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1 A. I'm not sure.

2 Q. Do you have any knowledge that the project itself was  
3 repossessed by a lender for over \$7 million that was owed?

4 A. I think I remember hearing something along those  
5 lines.

6 Q. Did you, yourself, ever do any kind of investigation  
7 to see what happened with the money you and the other  
8 investors put into Diamante Del Mar?

9 A. We did not.

10 Q. Do you know or were you told that Mr. Jowdy took \$3  
11 million loan against that property after your investments?

12 A. I vaguely remember Mr. Kenner mentioning something  
13 along those lines, but not that specific.

14 Q. And prior to that loan it was actually the property  
15 was owned by the investors and the company free and clear?

16 A. I didn't know that.

17 Q. Do you know what the value of that property was?

18 MR. MISKIEWICZ: Objection, scope.

19 MR. LA RUSSO: As an investor.

20 THE COURT: Overruled.

21 A. I don't know what the overall value was.

22 Q. Did you have any conversation with the FBI? Did they  
23 tell you what happened?

24 A. I don't recall.

25 Q. Did you ask the FBI to look into it?



**M. Peca - Cross/LaRusso**

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1 A. No, sir.

2 MR. MISKIEWICZ: Objection.

3 THE COURT: Overruled.

4 MR. LA RUSSO: Mr. Haley, do you have any  
5 objections?

6 MR. HALEY: So the Court can appreciate my  
7 hesitation, it's no one's fault in that regard --

8 MR. MISKIEWICZ: Your Honor --

9 MR. HALEY: May we approach, Judge?

10 THE COURT: Yes.

11 (Continued on next page.)

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**M. Peca - Cross/LaRusso**

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1 (The following takes place at sidebar.)

2 MR. LA RUSSO: Judge, I believe these are in  
3 evidence but I didn't get a chance to check.

4 MR. HALEY: Here's my hesitation.

5 There have been any number of stipulations  
6 regarding bank records. I certainly don't have any  
7 problem of properly authenticated bank records being  
8 produced. If these were part of a stipulation, I have  
9 zero problem. I'm getting a sense it wasn't part of the  
10 stipulation. Do you know, Mr. Miskiewicz, were these part  
11 of the stipulation?

12 MR. MISKIEWICZ: I believe the Gaarn statements  
13 are part of the stipulation and we were going to offer our  
14 own copy in. I'm not sure about the rest. We have no  
15 objection.

16 MR. HALEY: My only point is if I'm given bank  
17 records that I haven't had a chance to be satisfied as  
18 part of the stipulation --

19 MR. LA RUSSO: I can do this. I can show them  
20 for identification and ask him to look, do you remember  
21 any monies coming from an account, and leave it like that.

22 MR. HALEY: Perfect.

23 MR. LA RUSSO: He gets a chance to look at it  
24 and if they're admissible, fine.

25 MR. MISKIEWICZ: Your Honor, then I can't

**M. Peca - Cross/LaRusso**

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1 redirect and this is a very important piece of redirect  
2 because of the source of those funds.

3 MR. LA RUSSO: We want it too.

4 MS. KOMATIREDDY: I can check in a minute.

5 THE COURT: If I give you 15 minutes or so?

6 MR. HALEY: Yes.

7 MR. LA RUSSO: This is part of the indictment.

8 THE COURT: Okay. Are you almost done?

9 MR. LA RUSSO: This is it. I am done, Judge.

10 MR. HALEY: Thank you, Judge.

11 (Continued on next page.)

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**M. Peca - Cross/LaRusso**

616

1 (The following takes place in open court.)

2 THE COURT: Members of the jury, the lawyers  
3 just need a couple of minutes to review those documents  
4 before they're offered into evidence, so why don't we take  
5 the morning break a little bit early and we will reconvene  
6 at 10 of 11. Don't discuss the case.

7 (The jury is excused.)

8 (Recess taken.)

9 (Continued on next page.)

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**M. Peca - Cross/La Russo**

617

1 (After recess.)

2 MR. LA RUSSO: Your Honor, as the Court knows,  
3 we reached an agreement on the exhibit, actually the  
4 government's exhibits, portions of the government's  
5 exhibits that are already in. I just have one other  
6 matter I'm trying try to refresh his recollection. I  
7 found a document to see if I can refresh his recollection.

8 MR. HALEY: So the adjournment was constructive.

9 MS. KOMATIREDDY: Given that the defense has now  
10 moved in C-29 which is the e-mail the subject line media  
11 counter punch, the content is all please see the link  
12 below TC and then a link to an article. This related to  
13 the prior discussion the parties had regarding whether  
14 Mr. Constantine used the GSF funds for personal benefit  
15 versus press related to the hockey players. The defense  
16 has now put squarely at issue what is the content of the  
17 article that HL group was hired to respond to.

18 Given that this is now an issue clearly in  
19 dispute we ask that the court permit admissibility of  
20 government exhibit 3309, which is the article we submit we  
21 showed proof, the witness will testify that he was the  
22 article that he was presented with to respond to and so  
23 now that it's come out the probative value would increase  
24 greatly because we actually have in evidence the defense's  
25 proposition for what they believe the purpose of the funds

**M. Peca - Cross/La Russo**

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1 was.

2 MR. LA RUSSO: Your Honor, I don't believe I  
3 opened the door. That was part of agreement, it's one  
4 article. If the government in that case that it feels it  
5 becomes relevant, we've already had a discussion and we're  
6 arguing it isn't. If it is --

7 THE COURT: The article referenced in the e-mail  
8 is a different article.

9 MR. LA RUSSO: Correct, totally different. And  
10 we didn't see it was personal. We said it related to  
11 Global Settlement Fund of Mr. Jowdy.

12 THE COURT: Again, whatever probative value that  
13 article has, to the extent I'm going to let the witness  
14 testify that it was a negative article about  
15 Mr. Constantine personally, I don't see any additional  
16 probative value if the jury knows what the negative aspect  
17 was.

18 The government doesn't need to try to argue to  
19 the jury that that was the not appropriate use of the  
20 funds, although I think the witness testified that it was  
21 a negative article about Mr. Constantine, so if this  
22 witness seems to know there were an article about  
23 Mr. Constantine I thought that is what I heard him say.  
24 So I agree with Mr. La Russo, I don't think he's opened  
25 the door to any additional proof on that.

**M. Peca - Cross/La Russo**

619

1           Let's bring in the jury.

2           MR. MISKIEWICZ: Your Honor, I have one more  
3 request. There was an answer that Mr. Peca gave regarding  
4 a break between him and Mr. Constantine, he said it was  
5 personal. I would like to have an opportunity just to  
6 confirm what he means by that and it's not a way by which  
7 we're going to get into what we just discussed, his prior  
8 conviction. I just don't know. I didn't know what he  
9 meant by that. I want to pursue it in redirect. I'd like  
10 to have an opportunity to just confirm what he's going to  
11 say between cross and -- the end of cross and redirect if  
12 I can have a brief moment.

13           MR. LA RUSSO: I think it's got to do with  
14 penthouse, we're trying to leave some issues out, we  
15 weren't going to talk about other investments that my  
16 client and Mr. Peca had. It had to do with penthouse.

17           THE COURT: Another negative article?

18           MR. LA RUSSO: No. We can have a talk right now  
19 to find out what it was.

20           MR. MISKIEWICZ: No. I want to make sure --

21           MR. LA RUSSO: I'm sorry. We can take two  
22 minutes and ask him about that.

23           THE COURT: We'll do it right here in open  
24 court. Let's bring him in.

25           (Witness enters the courtroom.)

**M. Peca - Voir Dire/Miskiewicz**

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1 THE COURT: Mr. Peca, before the jury comes back  
2 Mr. Miskiewicz wants to ask you one question, we want to  
3 make sure we know what your answer is.

4 THE COURT: Go ahead..

5 BY MR. MISKIEWICZ:

6 Q. Mr. Peca before the break, during the  
7 cross-examination you indicated there was a break between  
8 you and Mr. Constantine. Could you elaborate on what you  
9 meant by personal reason?

10 A. It has to do with motivation in penthouse that these  
11 two here gentlemen got me involved and that turned out to  
12 be a great nightmare in my life.

13 MR. MISKIEWICZ: All right.

14 THE COURT: Mr. La Russo.

15 MR. LA RUSSO: Yes, that's fine. That's what we  
16 assumed it was.

17 MR. HALEY: Your Honor, I apologize. Is that  
18 question going to be asked.

19 THE COURT: I'm going to allow it.

20 MR. HALEY: That part of it said that was great  
21 nightmare. It's not going to open up, Judge, I apologize.

22 THE COURT: I think, again Mr. La Russo has  
23 asked him why the relationship ended. I don't want it to  
24 be characterized that it was a nightmare. It related to  
25 something else. The jury should understand it to do with



**M. Peca - Cross/La Russo**

621

1 what we're describing here. Not that it was a nightmare.

2 Okay?

3 THE WITNESS: Okay.

4 THE COURT: Okay.

5 THE CLERK: All rise.

6 (Whereupon, the jury entered the courtroom.)

7 THE COURT: If everyone would be seated.

8 Okay, go ahead, Mr. La Russo.

9 MR. LA RUSSO: Thank you, your Honor.

10 Your Honor, there's been a stipulation of both the  
11 government, the defendant and Mr. Haley, the Government  
12 Exhibit 1724, this is a portion of that exhibit, it's the  
13 statement, the bank statement of Phil Kenner for the  
14 period February 20, 2009 through March 23, 2009 and  
15 turning to the third page.

16 THE COURT: Let me make sure. Are you  
17 separately using this?

18 MR. LA RUSSO: It's already in evidence. I  
19 believe it's received during the government, when we put  
20 in all those numbers in, Judge, this is a portion of that,  
21 the Government Exhibit, I'll read it. 1724.

22 THE COURT: Okay, Go ahead, Mr. La Russo.

23

24 BY MR. LA RUSSO:

25 Q. I highlighted portion, Mr. Peca, if you can read it

**M. Peca - Cross/La Russo**

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1 so the jurors -- can you read what that says, the  
2 highlighted portion?

3 A. Deposit CORR/ADJ fee image, wire type, wire out,  
4 date, 090223.

5 Q. There's a series of numbers?

6 A. Where.

7 Q. Would you agree with me that's the beneficiary of  
8 this wire?

9 A. Yes.

10 Q. Michael A. Peca, that's you, correct?

11 A. Correct.

12 Q. And it says March 23, 2009 for 12,400?

13 A. Right.

14 Q. Do you have any recollection of receiving that money  
15 from Mr. Kenner?

16 A. I do not.

17 Q. Do you remember, in your relationship with him,  
18 receiving money, is that correct?

19 A. Possibly.

20 Q. Do you know the source of any of this money that you  
21 were receiving at this point?

22 A. I don't.

23 MR. LA RUSSO: Your Honor, likewise, Government  
24 Exhibit 1725 Mr. Kenner's statement for March 24, 2009  
25 through April 22, 2009, again a portion of that exhibit,

**M. Peca - Cross/La Russo**

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1 turning to this page and maybe I can summarize it quickly,  
2 a wire out from Mr. Kenner's account beneficiary  
3 Michael A. Peca, \$2,196.67, do you have any recollection  
4 of receiving this money from him on March 4, 2009.

5 A. No, sir.

6 Q. It does not mean anything to you?

7 A. It does not.

8 Q. Again, Government Exhibit 1726, this is a portion of  
9 it, this is Mr. Kenner's statement from April 23, 2009  
10 through May 20, 2009 the Government Exhibit 1726. And  
11 I'll summarize on page 3, the highlighted portion it's a  
12 wire out again on May 5, 2009 to Michael A. Peca and the  
13 amount is \$14,587.67. Do you have recollection of what  
14 that is for?

15 A. I do not.

16 Q. Do you have any recollection of receiving any of the  
17 amounts of money on the date described?

18 A. No, I do not.

19 Q. And lastly, this is the bank records of Timothy R.  
20 Gaarn, G-A-A-R-N for the period January 14, 2009 through  
21 February 11, 2009. This is Government's Exhibit 2302,  
22 this is a portion of it, this is page two of four.  
23 Highlighted portion is \$13,901.59, funds transferred from  
24 Mr. Gaarn's account to Michael Peca.

25 Do you have any recollection of that?

**M. Peca - Cross/La Russo**

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1 A. No, sir. None.

2 Q. By the way, who is Mr. Gaarn?

3 A. Tim Gaarn was a gentleman that I met in Long Island  
4 back in 2003.

5 Q. Did you meet him through anybody?

6 A. I met him through a life insurance salesman in the  
7 Long Island area.

8 Q. Did you maintain a relationship with him after that?

9 A. This was the first and last time that I had seen him.

10 Q. Do you have any recollection of why you're getting  
11 this money?

12 A. I have no idea.

13 Q. You never spoke to him about any money being  
14 transferred into your account?

15 A. No idea.

16 MR. LA RUSSO: Last series of questions, if I  
17 may, your Honor.

18 Q. You said that -- and I'm not going to rehash all the  
19 testimony, regarding the lawsuit that was brought against  
20 Mr. Constantine, the lawyer, Stolber, people that were  
21 aligned with him, let me show you with what was marked for  
22 identification as C-37, I'm going to turn to a number of  
23 pages inside, I'm going to draw your attention to them,  
24 look at them, please, make sure that you've seen them so  
25 you're satisfied. Then I'm going to ask a couple of

**M. Peca - Cross/La Russo**

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1 questions. It will be the first four pages, and then turn  
2 to the another one after that.

3 A. Okay.

4 Q. I'm going to direct your attention to a couple of  
5 pages so you'll be answering some additional questions.

6 A. That's my signature.

7 Q. Do you recognize this?

8 A. I do.

9 Q. And it refreshes your recollection as to Mr. Stolber  
10 and the other hockey players?

11 A. Yeah, he was representing the LLC with the other  
12 investor players.

13 Q. And you were a member of the LLC?

14 A. Correct.

15 Q. So he was representing the LLC that you were a member  
16 of?

17 A. Correct.

18 Q. And you didn't have a personal relationship  
19 lawyer/client relationship, he was the lawyer for the  
20 group of hockey players, the LLC that you were part of?

21 A. Correct.

22 Q. And this document reflects your signature authorizing  
23 him to represent you; is that correct?

24 A. Yes.

25 MR. LA RUSSO: Your Honor, I don't want to

**M. Peca - Redirect/Miskiewicz**

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1 introduce the whole document but just the relevant pages.  
2 I'll go over it with the government and we'll go through  
3 it later.

4 THE COURT: Okay.

5 MR. LA RUSSO: I have no further with questions.

6 THE COURT: Redirect.

7

8 REDIRECT EXAMINATION

9 BY MR. MISKIEWICZ:

10 Q. Mr. Peca, I want to do this in order of  
11 cross-examinations first. Just a few questions about  
12 cross-examination questions that you received from  
13 Mr. Haley yesterday. You were asked a series of questions  
14 about your grand jury testimony?

15 A. Yes.

16 Q. And I think you said you did answer truthfully,  
17 correct?

18 A. Yes, sir.

19 Q. And you answered it truthfully based upon whose  
20 information?

21 A. I based it mostly on my information and what I wasn't  
22 sure of Phil Kenner helped and cleared the picture a  
23 little bit.

24 Q. And specifically the whole portion of your testimony  
25 about Hawaii assets or Hawaii investments being loaned to

**M. Peca - Redirect/Miskiewicz**

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1 Ken Jowdy, is that something that you specifically recall  
2 or independently recall? Was that one of those things  
3 that Mr. Kenner or Mr. Richards helped you with?

4 A. More so Mr. Kenner, it was a big topic of  
5 conversation. You know, the whole theme was I believe I  
6 even said this in the grand jury testimony, it was clear  
7 there because the loan that was made to Ken Jowdy was  
8 never paid back.

9 When the loan was made to Ken Jowdy I was never  
10 informed that the loan was made to Ken Jowdy in my mind,  
11 but I was made aware and that's what I testified to.

12 Q. You did make investments, you were asked by  
13 Mr. La Russo and perhaps yesterday, you did make think you  
14 said a half a million dollar investment to a Diamonte del  
15 Mar Mexico project?

16 A. Correct.

17 Q. When you made those investments, you knew that  
18 Mr. Jowdy was running that operation?

19 A. I knew that he was involved, yes.

20 Q. You did have an independent recollection of making  
21 that investment, correct?

22 A. Correct.

23 Q. And were you also simultaneously making an investment  
24 or you had investments in the Hawaii project?

25 A. Yes.

**M. Peca - Redirect/Miskiewicz**

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1 Q. I think -- last question.

2 I think there was a reference to whether or not  
3 you felt coerced at any point in Mr. Haley's  
4 cross-examination. Do you recall taking a break or asking  
5 for a recess during the grand jury proceedings?

6 A. I do.

7 Q. Why did you do that?

8 A. The night before and leading up to, I was led to  
9 believe that this was a grand jury convened for  
10 prosecution regarding Ken Jowdy. Slowly as the questions  
11 were being answered, I was becoming increasingly  
12 uncomfortable based upon what I had testified the night  
13 before, and when I took a break I came back in I said this  
14 is not the two lawyers for Ken Jowdy and it was about Phil  
15 Kenner, and I was growing increasingly uncomfortable.

16 Q. Turning to the questions you received from  
17 Mr. La Russo both yesterday and today, actually we'll take  
18 one of the last series of questions first. You were shown  
19 a series of accounts, Government Exhibits 724, 25, 26, and  
20 you indicated that you had no recollection of getting  
21 money that seemed to be indicated that you were getting in  
22 these accounts?

23 A. Correct.

24 Q. Showing you the third page of Government's Exhibit  
25 1724, this is a Phil Kenner account dated or for the



**M. Peca - Redirect/Miskiewicz**

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1 period 2/20/09 through 3/23/09.

2 At or about this time in addition to the  
3 investments in Hawaii and other investments that you  
4 testified about, did you also, through Mr. Kenner, also  
5 invest in a penthouse with some kind of unit condominium  
6 unit at the Palms hotel?

7 A. Yes.

8 Q. When you invested there in that, what if any was the  
9 agreement that you reached with Mr. Kenner about who would  
10 cover the mortgage payments on that condominium? What was  
11 your agreement?

12 MR. HALEY: I object.

13 THE COURT: Why don't you approach.

14 MR. HALEY: Thank you

15 (Continued on next page.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**M. Peca - Redirect/Miskiewicz**

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1 (Whereupon, the following occurred at sidebar.)

2 THE COURT: What's the objection?

3 MR. HALEY: Your Honor, it is -- in my view it  
4 would clearly constitute 404(b) material and there was  
5 representation made sometime ago that the government was  
6 not introducing 404(b) material. If this line of inquiry  
7 actually was the Palms unit in of itself it would be a two  
8 day trial, involved instances where there were contracts  
9 between the various parties, our client's position is that  
10 Mr. Peca breached the contract. It's a dispute that is  
11 entirely a complete distraction to this jury.

12 THE COURT: What's the relevance to this case?

13 MR. MISKIEWICZ: I didn't introduce it.

14 MR. LA RUSSO: I can tell you my theory, this is  
15 \$45,000 that came out of the sales of stock that  
16 Mr. Kenner and Mr. Gaarn conspired.

17 THE COURT: Keep your voice down.

18 MR. LA RUSSO: Sorry.

19 MR. MISKIEWICZ: So in essence, part of the  
20 withdrawal of money from Eufora and/or other aspects of  
21 the Global Settlement Fund, Mr. Kenner is diverting to  
22 keep him quiet as long as he can be paying off the  
23 mortgages on those condos. The condo may or may not be  
24 fraudulent. So this money represents the defendant wiring  
25 into Mr. Peca's account.

**M. Peca - Redirect/Miskiewicz**

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1 THE COURT: Eufora money?

2 MR. MISKIEWICZ: Was it money that was --

3 MR. LA RUSSO: That's going to be our argument.

4 MS. KOMATIREDDY: Every single one of these  
5 payments is because Mr. Kenner owes Mr. Peca money. It's  
6 not that Mr. Peca is getting proceeds. It's an -- I think  
7 we need to establish that there's a separate investment in  
8 which Mr. Peca is supposed to get payments from Mr. Kenner  
9 because this particular Waterstone account is solely for  
10 the purpose of the mortgage on the condo.

11 THE COURT: I think some explanation of his  
12 receiving the money, the jury should know whether it's  
13 based on something we're talking about here or not.

14 MR. HALEY: He said you know if we leave the  
15 Palms, he breached the agreement between myself -- we end  
16 up going down a path.

17 THE COURT: I want to know -- you suggest  
18 there's some fraud with respect to that.

19 MR. HALEY: Thank you.

20 MR. MISKIEWICZ: Thank you, Judge.

21 (Continued on next page.)

22

23

24

25

**M. Peca - Redirect/Miskiewicz**

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1 (Whereupon, the following occurred in open  
2 court.)

3 THE COURT: Go ahead, Mr. Miskiewicz.

4 MR. MISKIEWICZ: Thank you, your Honor.

5 BY MR. MISKIEWICZ:

6 Q. At or about this time, Mr. Peca, did you have some  
7 agreement by which the defendant Mr. Kenner agreed to pay  
8 the mortgage on those condominiums?

9 A. That was it was a penthouse and he was responsible  
10 for all carrying costs.

11 Q. And again I'll show you the date and pages on the  
12 various time frame of these transactions, at least on the  
13 Kenner accounts.

14 Showing you 724, 25, 26, does that refresh your  
15 recollection now that these represented wire transfers  
16 into your account from Mr. Kenner for the mortgages on  
17 those -- on that penthouse?

18 A. Yes, quite possible.

19 Q. Being quite possible, do you have any reason to doubt  
20 that that's what the wire transfers were going for?

21 MR. HALEY: I object.

22 THE COURT: Sustained. Sustained.

23 Q. Also with respect to the Palms, you were asked by  
24 Mr. La Russo I think yesterday about an e-mail that you  
25 received in which you were notified that you would be

**M. Peca - Redirect/Miskiewicz**

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1 getting an additional interest in some Palms units. Are  
2 those different from, assuming those represent your  
3 condominium mortgage payments for the penthouse, are these  
4 different units or are you talking about different units?

5 A. Separate units.

6 Q. Also said to Mr. La Russo there came a time that you  
7 and Mr. Constantine had a parting of the ways that was  
8 permanent. What was the reason for that?

9 A. It was with respect to the same Palms penthouse unit.

10 Q. Can you explain that to the jury? What about the  
11 Palms units was it that you, that upset you?

12 A. It was one unit, when I first got involved with the  
13 unit it was strictly with Phil Kenner. He indicated that  
14 he was my sole partner at the unit. And at the time of  
15 the Global Settlement Fund pitch, Tommy mentioned I'm also  
16 your partner in the penthouse which is the first time I  
17 ever heard it in my life. Phil didn't say anything. I  
18 questioned him about it later, his comment was I told him  
19 about it. I told him it might perceive that way. That I  
20 don't need to apologize. But then it's just a series of  
21 you know times are real, closing cost, I'm just covering  
22 the cost, if it turns over I'll could end up getting all  
23 the costs, and keep my mouth shut. But then it was just a  
24 series of trying to figure out what was going on, who was  
25 covering the cost, because it turned out I had to up

**M. Peca - Redirect/Miskiewicz**

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1 covering all the cost, everything was in my name and to  
2 this day It's still costing me a lot of money.

3 MR. HALEY: Judge, I object, I ask that that  
4 last portion be stricken.

5 THE COURT: Yes. Sustained. The last portion  
6 will be stricken, that transaction is not relevant for  
7 purposes of this case.

8 MR. HALEY: Thank you, sir.

9 Q. Yesterday you were shown by Mr. Constantine's lawyer  
10 Mr. La Russo Defendant's Exhibit C-24.

11 Just so we can show what you're talk about, what  
12 you were being shown by Mr. La Russo, this e-mail  
13 yesterday that begins: I'm happy to report that we have  
14 executed the memorandum of understanding?

15 A. I remember that, yes.

16 Q. I'm going to show you the actual exhibit, if you  
17 would follow along, please. (Handing.)

18 There was attached to that e-mail a letter, do  
19 you see it on the second page of that exhibit?

20 A. Yes.

21 Q. Do you have an independent recollection of actually  
22 seeing this memo, I'm sorry, the letter at the time of  
23 this e-mail?

24 A. I might have looked at it, yeah.

25 Q. Would you read, I'll read out loud, the first line of

**M. Peca - Redirect/Miskiewicz**

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1 the sentence.

2 THE COURT: Okay.

3 Q. This letter and the term sheet attached here to as  
4 Exhibit A set forth the terms, Tommy Constantine and his  
5 associated existing settlement, that is TC and A are  
6 willing to enter into negotiations to attempt to agree on  
7 the definitive form of agreements, that is agreements, for  
8 Sonenglick Industries LLC or its approved, assigns and TC  
9 and A to enter into a joint venture, J V, to acquire the  
10 existing mortgage debt encumbering the project followed by  
11 the acquisition by JV of the ownership of the more project  
12 that's more particularly expressed below.

13 What does that mean?

14 A. I don't know.

15 Q. And if I asked you to read paragraph one and asked  
16 you whether or not it basically said that there is a loan  
17 outstanding, and that Mr. Sonenglick is going buy up the  
18 loan on this Cabo San Lucas dial, do you want to take a  
19 minute to see if you agree that that's in sum and  
20 substance what it says?

21 A. It looks like that's what it says.

22 Q. And then in paragraph 2 it says acquisition of the  
23 project, take a minute, take as long as you need, would  
24 you agree in essence it says after Mr. Sonenglick buys out  
25 this \$125 million loan then the joint venture, the JV, is

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1 going to take over the Cabo San Lucas project, foreclose I  
2 think is one of the words he uses.

3 A. Okay.

4 Q. Is that in sum and substance what it says?

5 A. Yes.

6 Q. I'll leave it there for now. Also paragraph nine  
7 which I think is 4 pages into Mr. La Russo's exhibit it  
8 says binding effect, would you agree with me that the  
9 purpose of that paragraph, take a moment to read, is  
10 basically saying nothing in this agreement is binding on  
11 anybody?

12 A. Yes.

13 Q. Insofar as you recall or now having read more fully  
14 if necessary the memorandum of understanding, when you got  
15 this e-mail from Mr. Constantine with this attachment,  
16 what, if anything, did you win as a result of these, all  
17 the settlement fund investments?

18 A. I'm not sure.

19 Q. Other than we're hoping, we're promising, maybe we'll  
20 take over Mr. Jowdy or Cabo San Lucas, is there anything  
21 here that you got, tangibly got as a result of this?

22 A. No.

23 Q. You got the keys to Cabo San Lucas?

24 A. No, sir.

25 Q. Do you have a key to the condominium, I don't mean



**M. Peca - Redirect/Miskiewicz**

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1 the penthouse, the other one that you were going to get an  
2 increased percentage of?

3 A. No.

4 Q. Did you ever see the airplane?

5 A. No.

6 Q. By the way, you'll agree with me that the original,  
7 you have the original or the exhibit original, it's pretty  
8 clear typewritten, would you for the record agree that the  
9 typewritten copy of the letter which goes on for a number  
10 of pages here is looks like it's come right out of a  
11 printer?

12 A. I suppose so, yes.

13 Q. Would you look at the last page, signature page?

14 A. Okay.

15 Q. See any difference between that signature page and  
16 everything that preceded it, in terms of the quality of  
17 the print?

18 A. It's much more faded.

19 Q. All right. I'll put up on the screen what you're  
20 looking at. Page immediately before what I was referring  
21 to was term sheet, appears to be printed off a printer,  
22 correct?

23 A. Yes.

24 Q. And it goes the last page of the letter, this is the,  
25 for the record would you agree that this is appears to be

**M. Peca - Redirect/Miskiewicz**

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1 essentially printed right off of a printer?

2 A. Yes.

3 Q. And then the signature line on the next page is  
4 blurred?

5 A. It's significantly blurred, yes.

6 Q. And the signature line for Mr. Sonenglick doesn't  
7 even match up with the signature line for Tommy  
8 Constantine?

9 A. It looks that way, yes.

10 Q. The only thing that appears on that last pages we  
11 look forward to working with you on this transaction,  
12 sincerely and then signed Tommy Constantine, correct?

13 A. Correct.

14 Q. Do you have any independent knowledge as to whether  
15 or not that signature line ever really accompanied any of  
16 the previous pages in this exhibit?

17 A. No.

18 Q. Did you ever meet Mr. Sonenglick?

19 A. I have not met him, no.

20 Q. Do you know he exists?

21 A. I do not.

22 Q. Yesterday you were asked a series of questions about  
23 Defendant's Exhibit C-25, this is a fax that you received  
24 to purchase or an option agreement to purchase an interest  
25 in Eufora, do you recall that?

**M. Peca - Redirect/Miskiewicz**

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1 A. Yes.

2 Q. And this pertained to your original investment of  
3 \$166,000 in the year in July 2004, is that accurate?

4 A. Correct.

5 Q. With respect to the other wire transfers that you  
6 made for a hundred thousand and for two other wire  
7 transfers that you made for a hundred thousand, one of  
8 which went to Constantine Management Group, did you ever  
9 get anything like that?

10 A. I did not.

11 Q. And Mr. La Russo asked you isn't it a fact that you  
12 did in fact get a percentage share our got an interest in  
13 Eufora, do you recall that question?

14 A. I do.

15 Q. As you sit here today, what do you have, a bank  
16 account in your pocket, in your asset and liability  
17 statement to show that you have actually an interest in  
18 Eufora?

19 A. Nothing.

20 Q. Mr. Peca, you were also asked by Mr. La Russo a  
21 series of questions about lawsuits initiated against Ken  
22 Jowdy. Do you recall that?

23 A. Yes.

24 Q. I think that you were also asked about a mediation  
25 that you attended?

**M. Peca - Redirect/Miskiewicz**

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1 A. Correct.

2 Q. Show you what I'm marking now as Government's  
3 Exhibit -- may I have a moment, your Honor -- I show you  
4 what I'm marking for identification now as MP-1.

5 (Handing.)

6 Take a moment and look at that. (Pause.)

7 MR. MISKIEWICZ: Your Honor, may just confer  
8 with counsel for a second about something?

9 (Counsel confer.)

10 MR. MISKIEWICZ: Your Honor --

11 MR. LA RUSSO: Your Honor, may we have just a  
12 brief sidebar.

13 (Continued on next page.)

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**M. Peca - Redirect/Miskiewicz**

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1                   (Whereupon, the following occurred at sidebar.)

2                   MR. MISKIEWICZ: There was a missing page. So

3                   this is an e-mail to Mr. Peca among a number of the other

4                   players who were part of a lawsuit instituted by Ronald

5                   Richards ostensibly for the Global Settlement Fund and

6                   directly relates to this memorandum of understanding,

7                   basically Mr. La Russo raised, he characterized it as did

8                   Mr. Jowdy sue. There was an offer of compromise or

9                   explanation he offered to sue, I mean he challenged,

10                  basically he left it to the jury to make it sound as if

11                  because Mr. Jowdy sued the deal fell through. In fact,

12                  what happens is Mr. Kenner and Mr. Constantine do not want

13                  any of the players to post in California and by this

14                  letter from Mr. Richards he's advising them basically the

15                  time has run out. If they don't withdraw the lawsuit

16                  without prejudice, the lawsuit's going to probably be

17                  dismissed with prejudice. We believe he would remember

18                  getting this letter from actually his attorney since he is

19                  a member of the Global Settlement Fund, and/or moving,

20                  we'd move to have it introduced simply to complete the

21                  picture that it wasn't that the deal somehow is rejected

22                  in negotiation in bad faith but rather again -- once

23                  again, the defendants engineered this effort to keep the

24                  players in the dark as much as possible. All of which

25                  falls by the wayside when about a year later he went into

**M. Peca - Redirect/Miskiewicz**

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1 the grand jury.

2 MR. HALEY: I have no objection, Judge.

3 MR. LA RUSSO: First of all, it's Mr. Richard's  
4 letter, so it's hearsay.

5 THE COURT: I know, but you opened the door to  
6 this.

7 MR. LA RUSSO: Judge, my objection is hearsay,  
8 but if he wants to refresh this witness' recollection by  
9 showing it to him and clarify it personally, that would be  
10 improper. That's the only reason.

11 THE COURT: Let we do it that way. See if you  
12 can refresh his recollection by this without actually  
13 putting it in.

14 MR. MISKIEWICZ: Thank you.

15 MR. LA RUSSO: Thank you.

16 (Continued on next page.)

17 (Whereupon, the following occurred in open  
18 court.)

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Peca - Direct/Mr. Miskiewicz

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1 REDIRECT EXAMINATION (Continued)

2 BY MR. MISKIEWICZ:

3 Q. Mr. Peca, to yourself, could you just read the  
4 letter, the attachment to the first page of what is now  
5 marked for identification purposes as Government Exhibit  
6 MP1.

7 A. I am referring to that.

8 Q. There is an attachment. Just read the letter --  
9 there is also a first page, Mr. Peca.

10 A. Okay. The first page is here.

11 DeVries versus Kenneth H Jowdy it says.

12 Q. To yourself.

13 A. I'm sorry. Okay.

14 Q. Does that in any way help refresh your recollection  
15 as to what happened to the lawsuit that you were asked  
16 about on cross-examination regarding Mr. Jowdy and his  
17 attempts to get back some of your funds from Mexico?

18 A. Yes.

19 Q. Tell the members of the jury what happened to that  
20 lawsuit.

21 A. That lawsuit was dismissed without prejudice.

22 Q. By who?

23 A. By the court.

24 Q. And other than that lawsuit, did your global  
25 settlement funds money, did you ever get an accounting of

Peca - Direct/Mr. Miskiewicz

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1 how those legal fees were spent?

2 A. How they were being spent, no.

3 Q. To this day do you know how they were spent?

4 A. Not exactly, no.

5 Q. And other than that one lawsuit, which was dismissed  
6 without prejudice, do you know if any money was spent in  
7 the litigation?

8 A. No.

9 Q. Did you get your money back?

10 A. Not to my knowledge.

11 Q. By the way, what if anything did that litigation that  
12 Mr. LaRusso asked you about regarding Mexico have to do  
13 with the millions or \$1.775 million in your line of credit  
14 that you authorized for the Hawaii investment? What if  
15 anything?

16 A. Nothing.

17 Q. One more question. Who moved to dismiss that  
18 lawsuit?

19 A. I'm not sure.

20 Q. Does reading that letter refresh your recollection as  
21 to who --

22 MR. HALEY: Objection.

23 BY MR. MISKIEWICZ:

24 Q. I will ask you again read the letter to yourself.  
25 Don't comment on it. I ask you if it refreshes your



Peca - Direct/Mr. Miskiewicz

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1 recollection as to who moved to dismiss the lawsuit  
2 against Mr. Jowdy.

3 MR. HALEY: Objection, your Honor.

4 THE COURT: No. That is okay.

5 BY MR. MISKIEWICZ:

6 Q. More specifically, was it Mr. Richards, in your  
7 behalf and the players behalf, or was it Mr. Jowdy?

8 MR. HALEY: I object to the leading nature of  
9 it. I object.

10 THE COURT: Overruled.

11 A. Mr. Richards. I remember at the time he told us we  
12 may possibly be put in a position where, you know, some  
13 players may be required to give depositions during the  
14 Olympics and during the season, which obviously would have  
15 proved difficult for us to participate in.

16 Q. Well, this is a, correct me if I'm wrong. What year  
17 is this happening? 2009?

18 A. Yes.

19 Q. No. 2010. Right?

20 A. 2010.

21 Q. You were in the Olympics in 2010?

22 A. No. I was tired.

23 Q. You didn't have any problem being deposed, did you?

24 A. No.

25 Q. Did anybody ever tell you that there was a request to

Peca - Direct/Mr. Miskiewicz

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1 have your deposition taken?

2 A. No.

3 Q. Did Mr. Richards, your lawyer hired through  
4 Mr. Kenner, tell you that?

5 A. No, he did not.

6 Q. Did Mr. Kenner tell you there was a deposition  
7 requested?

8 A. No.

9 Q. Were you given any information about the status of  
10 the lawsuit?

11 A. Not until it was dismissed.

12 Q. And that Mr. Richards is the same Mr. Richards who  
13 appeared with you just before you went into the grand jury  
14 in Manhattan?

15 A. Yes, it is.

16 Q. A year later.

17 A. Correct.

18 Q. And got prepped by Mr. Richards and the defendant.

19 A. Correct.

20 Q. Just one last question.

21 Do you remember this Mr. Sonenglick letter?

22 A. Yes.

23 Q. That Mr. LaRusso asked you about?

24 A. Yes.

25 Q. There is a page here that says -- I will get it for

**Peca - Recross/Mr. Haley**

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1 you in a minute. See where it says SI? I will read it  
2 into the record.

3 *SI, Sonenglick Industries, will recognize the*  
4 *11.3 plus-minus M -- that must mean millions -- of cash*  
5 *equity contributed by TC&A -- that's you guys -- to the*  
6 *current owner.*

7 Where was that 11.3 million going to come from?

8 A. No idea.

9 Q. So when you were given this congratulatory email from  
10 Mr. Constantine, were your troubles over regarding all the  
11 millions you had lost?

12 A. No, they weren't.

13 Q. To this day do you have any accounting of where they  
14 went?

15 A. None.

16 MR. MISKIEWICZ: No further questions.

17 THE COURT: Mr. LaRusso, anything further?

18 MR. LaRUSSO: I do. But Mr. Haley needs to go  
19 first, judge.

20 THE COURT: All right.

21 MR. HALEY: Thank you.

22

23 RECROSS-EXAMINATION

24 BY MR. HALEY:

25 Q. Mr. Peca, the very first question that Mr. Miskiewicz

**Peca - Recross/Mr. Haley**

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1 asked you on redirect concerned your claim that you felt  
2 uncomfortable testifying before the grand jury in the  
3 Southern District of New York.

4 Do you recall that testimony?

5 A. It grew uncomfortable. Yes.

6 Q. And I believe Mr. Miskiewicz asked you a question  
7 about whether there came a point in time you asked to  
8 consult with your attorney. Is that correct?

9 A. Correct.

10 Q. And you then left the grand jury room.

11 A. Yes, sir.

12 Q. And then spoke with Mr. Richards. Is that correct?

13 A. Yes.

14 Q. Did you then return? You then returned to the grand  
15 jury room. Is that true?

16 A. Yes.

17 Q. I'm going to show you a document marked Kenner  
18 Exhibit 20 for identification. And it is somewhat lengthy  
19 but I will simply request that you look at the document,  
20 every page, in a gross sense, and then I'm going to ask  
21 you some questions. Okay?

22 Mr. Peca, if I may. As relates to that  
23 document, if you can perhaps just look through it more  
24 quickly, my question is, sir, does that appear to be the  
25 transcript of your testimony before the grand jury in the

**Peca - Recross/Mr. Haley**

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1 Southern District of New York? That is my question.

2 A. Yes.

3 Q. Now I'm going to show you a specific page in this  
4 document, sir. Specifically, page 35.

5 A. Okay.

6 Q. Does that appear to be the point in the grand jury  
7 testimony where the questioning of you continued after you  
8 had consulted with Mr. Ronald Richards?

9 A. Yes. One of the two times.

10 Q. And from that point on, to the end of that grand jury  
11 testimony and questioning, did you ever say to the grand  
12 jury outside of the presence of Mr. Richards, who was not  
13 inside the grand jury room, that you felt uncomfortable  
14 about answering any of the questions posed to you?

15 A. I did not.

16 Q. I believe you testified that the reason you felt  
17 uncomfortable was because you were under the impression it  
18 was a grand jury investigation of Jowdy, and then through  
19 the questioning you surmised that it was a grand jury  
20 investigation of Phil Kenner. Is that correct?

21 A. That would be correct.

22 Q. Well, after you consulted with Mr. Richards, you were  
23 asked this specific question, were you not, sir?

24 Question: Let me show you Grand Jury Exhibit  
25 107, starting with the signature. Is that your signature?

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1 Answer: It is.

2 Question: This letter is dated March 11, 2005.

3 *Gentlemen, this letter is your authorization to*  
4 *allow Philip A Kenner to access my above-referenced line*  
5 *of credit, it says for line of credit, for direct deposit*  
6 *to Aisle IV account at Northern Trust, he is authorized to*  
7 *sign for the release of funds relating to the line.*

8 *Do you remember signing this?*

9 Answer: I do.

10 That's what you testified to. Correct?

11 A. That's what it says.

12 Q. And that was truthful testimony. Correct?

13 A. Correct.

14 Q. It goes on to say:

15 *Did you write this or was it written and given*  
16 *to you?*

17 Answer: It was prepared for me. I read it and  
18 signed it.

19 Question: Who prepared it for you?

20 Answer: I'm not sure.

21 Question: Who gave it to you?

22 Answer: Phil.

23 Do you recall that testimony senior?

24 MR. MISKIEWICZ: Objection.

25 THE COURT: Yes. Sustained.

**Peca - Recross/Mr. Haley**

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1           You have to approach. I don't understand where  
2           we are going with there as relates to his --

3           MR. HALEY: I will withdraw the question.

4           BY MR. HALEY:

5           Q. Sir, is it not a fact that after you consulted with  
6           attorney Ronald Richards and based upon your testimony  
7           today and yesterday you were now uncomfortable about  
8           answering questions, you nevertheless answered 51  
9           questions thereafter in front of that grand jury?

10          Isn't that true?

11          A. Yes, sir.

12          Q. At any point in time before your testimony in front  
13          of the grand jury in the Southern District of New York,  
14          did Phil Kenner tell you that you had to consult or be  
15          represented only by Ronald Richards as relates to this  
16          proceeding?

17          Yes or no?

18          A. It seemed so. It seems that way, yes.

19          Q. When you say it seemed that way, sir, at no point in  
20          time did you, at any point in time when Phil Kenner  
21          suggested it only must be Ron Richards who represents you,  
22          did you at any point in time inquire as to why that needed  
23          to be?

24          A. Because he knew Ken Jowdy better than he knew himself  
25          and that he went to the depositions and Ron knew the case.

**Peca - Recross/Mr. Haley**

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1 Q. And you were comfortable with that, were you not?

2 A. I was.

3 Q. As a matter of fact, that comfort level actually was  
4 one that developed back a year earlier in 2010 when you  
5 were in Los Angeles for the mediated settlement  
6 discussions. Correct?

7 A. I suppose so.

8 Q. From that point in time in 2010 up to the grand jury  
9 testimony in 2011, was there anything prohibiting you from  
10 consulting any other attorney as relates to these matters?

11 A. No.

12 Q. Now, you were asked a question by Mr. Miskiewicz as  
13 to whether you ever had an understanding or knowledge as  
14 to where the monies that were devoted to the global  
15 settlement fund, where they went.

16 Do you recall that question?

17 A. Yes, I do.

18 Q. And I believe you testified a moment ago, to this day  
19 you have no idea. Is that right?

20 A. I have seen like a bank spreadsheet but I don't know  
21 what any of it meant.

22 Q. Correct, sir. As a matter of fact, when you were  
23 interviewed by the FBI on February 22, 2012, you told the  
24 FBI that you had seen this spreadsheet regarding the  
25 disbursement of the global settlement fund. Correct?



**Peca - Recross/Mr. Haley**

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1 A. Correct. I received it from a friend of mine who  
2 received it. It didn't explain much.

3 Q. But there were numbers on it. Correct?

4 A. There were. There was no way to authenticate it so I  
5 wasn't sure --

6 Q. That's not my question, sir. I wasn't asking you  
7 whether or not there was a way to authenticate it. My  
8 question to you is as relates to the interview of you by  
9 the FBI in February of 2012.

10 Prior to that interview you had received, now  
11 you tell us through this friend, a spreadsheet that  
12 reflects where the money went with reference to the global  
13 settlement fund. Correct?

14 A. That's correct.

15 Q. That had numbers on it. Is that correct?

16 A. Yes, it did.

17 Q. You were able to visualize those numbers?

18 A. To some extent, yes.

19 Q. Okay. Finally, sir.

20 During the course of the communications either,  
21 during the course of the communications between you and  
22 Phil Kenner with respect to a line, the line of credit,  
23 Mexico, things of that nature, in addition to personal and  
24 telephone conversations, I believe you testified to the  
25 other day, there were also exchanges of text messages,

**Peca - Recross/Mr. Haley**

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1 were there not?

2 A. Oh, yes. Several I'm sure.

3 Q. Sir, would you kindly take a look at that document.

4 A. Okay.

5 Q. Do you recall a text message of that substance that  
6 occurred between yourself and Phil Kenner on or about  
7 December 9, 2000?

8 A. Sure.

9 Q. Excuse me. It is cut off.

10 It is 2009. I apologize.

11 And in that text message from you to Phil, you  
12 respond: Oh, yah. Thanks. Cleaning up my file today.

13 MR. MISKIEWICZ: Objection. It has not been  
14 moved into evidence.

15 THE COURT: Are you offering it?

16 MR. HALEY: I am offering it into evidence. I  
17 apologize.

18 THE COURT: Any objection?

19 MR. MISKIEWICZ: May I have a voir dire?

20 I will withdraw it.

21 We have no objection.

22 THE COURT: Any objection?

23 MR. LaRUSSO: No, your Honor.

24 THE COURT: What is the number?

25 MR. HALEY: This is going to be number 21.

Peca - Recross/Mr. LaRusso

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1 THE COURT: 21 is admitted. Go ahead. You can  
2 ride it.

3 (Defense Exhibit 21 in evidence.)

4 BY MR. HALEY:

5 Q. Sir, that text exchange between yourself and Phil, it  
6 reads, for the record:

7 *Oh, Yah. Thanks. Cleaning up my files today.*  
8 *We never did get the docs on the Mexico stuff. I have*  
9 *ashtload of Hawaii -- a what? I think you were going to*  
10 *say a shitload of Hawaii -- docs but no Mexico. Would*  
11 *like them. Thanks.*

12 Is that what it says?

13 A. Yes, it does it.

14 MR. HALEY: Thank you, sir.

15 THE COURT: Mr. LaRusso.

16 MR. LaRUSSO: I will try and be brief, judge.

17

18 RECROSS-EXAMINATION

19 BY MR. LaRUSSO:

20 Q. Mr. Peca, when Mr. Miskiewicz was questioning you,  
21 you said that you were never given the status of the  
22 lawsuit.

23 Do you remember that testimony?

24 A. Yes.

25 Q. Would you take a look at that.

Peca - Recross/Mr. LaRusso

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1           Would you be prepared to stay that that is a  
2       communication to you and the other hockey players  
3       regarding the status of the lawsuit?

4       A.    Yes.

5       Q.    So when you testified you were never given the status  
6       of the lawsuit, that wasn't completely accurate in  
7       response to Mr. Miskiewicz when asked a question on  
8       redirect. Right?

9       A.    This was the first we got of it.

10      Q.    The first time?

11      A.    This one.

12      Q.    Well, let me show you what has been marked for  
13      identification as C39.

14           By the way I will direct your attention to your  
15      testimony earlier that you had no idea that you were being  
16      deposed during the Jowdy case, and your answer was:

17      *That's correct.* Correct?

18      A.    I had no idea that I was being asked to be deposed.  
19      Correct.

20      Q.    I'm going to show you this marked for identification  
21      C39. Does that refresh your recollection that there were  
22      communications to you and to the other hockey players  
23      regarding the status of the Jowdy lawsuit?

24      A.    Yes.

25      Q.    Okay. So that is the second communication we have

Peca - Recross/Mr. LaRusso

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1 looked at where you have gotten communications from  
2 Mr. Richards regarding the status of the lawsuit. Is that  
3 correct?

4 A. Correct. This is a generalized note. Yes.

5 Q. But your testimony earlier was that you never, when  
6 Mr. Miskiewicz asked you, you said you never got a status  
7 update.

8 We now know at least two. Correct?

9 A. Correct.

10 Q. Okay. Looking at the document, does it refresh your  
11 recollection that you are being advised by Mr. Richards  
12 that the court has ordered depositions in the early part  
13 of 2010?

14 A. We were told that that's when they would like to do  
15 them, but I was never asked to schedule one.

16 Q. But Mr. Richards is advising you that is what is what  
17 is going on in the Jowdy suit. Is that correct?

18 A. Correct.

19 Q. And he's also telling you, do you remember, that it  
20 is imperative that people be available for these  
21 depositions?

22 MR. MISKIEWICZ: Objection.

23 BY MR. LaRUSSO:

24 Q. Do you recall that?

25 MR. MISKIEWICZ: Objection.

Peca - Recross/Mr. LaRusso

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1 THE COURT: Overruled.

2 A. I don't.

3 BY MR. LaRUSSO:

4 Q. You testified on redirect that you were told that the  
5 case was dismissed because hockey players weren't  
6 available.

7 Do you recall that?

8 A. I do.

9 MR. MISKIEWICZ: Objection.

10 THE COURT: Overruled.

11 BY MR. LaRUSSO:

12 Q. And isn't it a fact that hockey players were not  
13 available for depositions?

14 A. To what extent I don't know.

15 Q. So you are only speaking from your own personal  
16 experience. You were available but the other hockey  
17 players may have been engaged in other activities and  
18 could not be made available.

19 Is that your recollection?

20 A. I don't know for sure if they were or not.

21 Q. Does this also refresh your recollection that  
22 Mr. Richards is advising you that even though it is  
23 critical that we get these depositions done, we may be  
24 able to pursue a resolution, a different resolution, of  
25 the case?

Peca - Recross/Mr. LaRusso

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1 MR. MISKIEWICZ: Objection.

2 THE COURT: Overruled.

3 BY MR. LaRUSSO:

4 Q. Is that correct?

5 A. He did talk about that.

6 Q. And the resolution was the possible settlement.

7 There were lengthy discussions. We are hoping to resolve  
8 there. That is what he is advising you. Is that correct?

9 A. The only discussions I had with Mr. Richards was  
10 after I gave the grand jury testimony and I had private  
11 emails with him regarding his conversations with Mr. Jowdy  
12 and the lawyer.

13 Q. Thank you. I'm going to switch over to this  
14 penthouse deal just for a few minutes.

15 Did you ever speak to Mr. Constantine before you  
16 entered into that penthouse deal with Mr. Kenner?

17 A. No.

18 Q. And at the time that you entered into those  
19 conversations with Kenner, you were an investor in Eufora.  
20 Is that correct?

21 MR. HALEY: Judge. I object on behalf of my  
22 client I object.

23 THE COURT: Yes.

24 I have already ruled on this whole issue  
25 regarding the condominiums, that it is not related to this

Peca - Recross/Mr. LaRusso

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1 case, so I'm sustaining that objection.

2 BY MR. LaRUSSO:

3 Q. One more question, judge. One more area, if I may.

4 Mr. Miskiewicz, on his redirect, showed you  
5 Government Exhibit -- excuse me Mr. Constantine Exhibit  
6 24, and he pointed out that the signature page had what  
7 appears to be a blue signature of Mr. Constantine and kind  
8 of a xeroxed signature of Mr. Sonenglick. Is that  
9 correct?

10 A. I don't believe that was part of the conversation.

11 Q. Do you recall testifying in answer to questions by  
12 Mr. Miskiewicz that this original document appears to have  
13 clear type but when you get to the last portion there is  
14 an unclear portion, or a faded portion, indicating that it  
15 wasn't part of the original.

16 A. The font looks a little more faded. Yes.

17 Q. By the way, you testified -- a long time ago, it  
18 seems like -- that part of your relationship with  
19 Mr. Kenner was signing signature pages without getting the  
20 document and sending the signature page back.

21 Do you remember that?

22 A. Yes.

23 Q. And by doing so, that might alter the context of the  
24 document sent back to Mr. Kenner. Is that correct? The  
25 clarity.



Peca - Recross/Mr. LaRusso

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1 A. I suppose, if it were the same document.

2 Q. We have an example earlier today, if I may, marked  
3 for identification as C37.

4 Do you remember the AZ Eufora agreement that you  
5 identified?

6 A. Yes --

7 Q. Said that you were a member of that LLC?

8 A. -- correct.

9 Q. And that was the LLC that hired Mr. Stolper to  
10 represent you in a civil suit?

11 A. Yes.

12 Q. And you looked at the three pages, and I'm showing  
13 you with all the lists, the fourth pages, with a list of  
14 all the members of that LLC. Correct?

15 A. Yes.

16 Q. But there is no signature on the document on the  
17 third page. Right?

18 A. Correct.

19 Q. But you identified the fact that you signed your  
20 signature. And that is on the sixth page. Right?

21 A. Correct.

22 Q. That page is not as clear as the document, itself.  
23 Is that right?

24 A. That's correct.

25 Q. Because are signed the signature page, it looks

**Peca - Further Redirect/Mr. Miskiewicz**

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1 fuzzy, faxed it back, and it was added to the original.

2 Correct?

3 A. It looks like that. Yes.

4 Q. That doesn't make the original a forgery. It doesn't  
5 makes the original an illegal agreement. You did it by  
6 way of sending a faxed signature page back to be added to  
7 the original document. Is that right?

8 A. That's what I did. Yes.

9 Q. And with regard to what Mr. Miskiewicz was showing  
10 you with regard to the Sonenglick, it is the same things.

11 MR. MISKIEWICZ: Objection.

12 THE COURT: Sustained as to form.

13 MR. LaRUSSO: Your Honor, those pages that I  
14 have just identified, I think we have introduced them. We  
15 may have a discussion regarding its administratively. So  
16 I'm finished with my examination.

17 THE COURT: Are you done?

18 MR. LaRUSSO: Yes, I am.

19 THE COURT: Ms. Miskiewicz?

20 MR. MISKIEWICZ: Two very focused questions.

21 Thank you, your Honor.

22

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MISKIEWICZ:

25 Q. You were just shown by Mr. LaRusso another email

1 about communications regarding your lawsuit and its  
2 dismissal.

3 When were you told by Mr. Richards, first of  
4 all, what is the date of that email that you were told  
5 about potential depositions?

6 What is the date of this email that you were  
7 just shown?

8 A. This one?

9 Q. No. C39.

10 A. January 27, 2010.

11 Q. And when did you get -- does that refresh your  
12 recollection as to when you got a letter from Mr. Richards  
13 saying whatever he said about the dismissal?

14 A. Yes. It is dated February 15, 2010.

15 Q. So you got this email after he already told you that  
16 the lawsuit was being dismissed. Right?

17 A. Yes.

18 MR. MISKIEWICZ: No further questions.

19 THE COURT: You can step down, Mr. Peca. Thank  
20 you.

21 (The witness was excused.)

22 THE COURT: We are going to go another 15  
23 minutes before the lunch break.

24 Please call the next witness.

25 MS. KOMATIREDDY: The government calls Shimon

**Betesh - Direct/Ms. Komatireddy**

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1 Betesh.

2

3 **SHIMON BETESH**

4 called by the Government, having been first duly  
5 sworn/affirmed, was examined and testified as  
6 follows:

7

8 DIRECT EXAMINATION

9 BY MS. KOMATIREDDY:

10 Q. Mr. Betesh, what do you do for a living?

11 A. I'm a real estate attorney.

12 Q. Where do you live?

13 A. Jamaica Estates, Queens.

14 Q. Is that here in New York?

15 A. Yes.

16 Q. Are you familiar with the New York area, Suffolk  
17 County, Nassau County?

18 A. Yes.

19 Q. You said you are a real estate attorney.

20 Can you explain to us what do you do as part of  
21 your job in real estate transactions?

22 A. I represent buyers, sellers, developers, as well as  
23 financial institutions in residence real estate  
24 transactions.

25 Q. Does your role as a real estate attorney sometimes

**Betesh - Direct/Ms. Komatireddy**

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1 involve the handling of money in real estate transactions?

2 A. Yes, it does.

3 Q. Can you explain that. How do you handle money in  
4 those transactions?

5 A. Sometimes if I represent the seller, a seller will  
6 send money to my escrow account to hold as a down payment.

7 If I represent the buyer, sometimes a buyer  
8 would wire monies as needed by the closing.

9 If I represent the lender, the lender would wire  
10 me money to my account to distribute at the closing.

11 Q. So in other words you serve as a middleman sometimes  
12 in real estate transactions where money passes through.

13 A. Correct.

14 Q. Now, were you involved in a transaction relating to  
15 the Led Better Development Company?

16 A. Yes. I was the purchaser's attorney.

17 Q. Before you came to court today, did you have a chance  
18 to review your file?

19 A. Yes, I did.

20 Q. Approximately what trial frame did the Led Better  
21 Development Corporation transaction that you were involved  
22 with occur?

23 A. October of 2007.

24 Q. How did you get involved with it?

25 A. I was retained by Phil Kenner who was a member of Led

**Betesh - Direct/Ms. Komatireddy**

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1 Better.

2 Q. How did you come to know Mr. Kenner?

3 A. I was introduced to Mr. Kenner when he worked at  
4 Assante by a mutual friend of ours.

5 Q. Did you meet with Mr. Kenner in person?

6 A. Yes, I did.

7 Q. Would you recognize him if you saw him again?

8 A. Yes, I would.

9 Q. Would you please look around the courtroom and  
10 identify anyone that you recognize as Mr. Kenner.

11 A. That's him.

12 MS. KOMATIREDDY: May the record reflect that  
13 the witness has identified the defendant Kenner.

14 MR. HALEY: He certainly has, judge.

15 THE COURT: Okay.

16 BY MS. KOMATIREDDY:

17 Q. What did Mr. Kenner tell you about himself?

18 MR. HALEY: I object.

19 THE COURT: Yes. Sustained as to the form.

20 BY MS. KOMATIREDDY:

21 Q. What did Mr. Kenner tell you about the Led Better  
22 transaction?

23 MR. HALEY: Object?

24 THE COURT: No, that's okay.

25 Go ahead. You can answer it.

**Betesh - Direct/Ms. Komatireddy**

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1 A. Just that they were buying land to develop property  
2 on.

3 Q. What did he say if anything -- what did he ask you to  
4 do in connection with that transaction, if anything?

5 A. To represent Led Better in the transaction. To  
6 review the contract. As I would normally do for any  
7 purchaser.

8 Q. What was your role in the transaction in terms of the  
9 money that was changing hands?

10 A. Led Better had wired me \$769,000 in my account to be  
11 used to purchase the transaction and to pay for closing  
12 costs.

13 Q. I'm going to show you what has been marked as Exhibit  
14 1401 in evidence.

15 Just looking at the top of this document, is it  
16 fair to say this is a bank statement?

17 A. Yes, it is.

18 Q. Who is the account holder?

19 A. Led Better Development Corporation LLC.

20 Q. What is the statement end date?

21 A. 10/31/2006.

22 Q. I'm just going down to the section entitled, you see  
23 *Withdrawals and Debits* on page two? It is also on your  
24 screen.

25 A. Yes.

**Betesh - Direct/Ms. Komatireddy**

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1 Q. Under withdrawal and debits, there appears a debit  
2 October 25 in the amount of \$769,000.

3 Do you see that?

4 A. Yes, I do.

5 Q. It says Shimon Betesh. Is that you?

6 A. Yes, it is.

7 Q. It also says Washington Mutual. Did you have a bank  
8 account at Washington Mutual Bank in 2007?

9 A. My attorney escrow account was at Washington Mutual.

10 Q. What was the purpose of your attorney escrow account?

11 A. That is an account where I receive wires for, again,  
12 lending institutions or purchasers to facilitate the  
13 purchase of the transaction.

14 Q. What was the purpose of receiving this wire in the  
15 amount of \$769,000?

16 A. It was monies to be used for the closing with Led  
17 Better.

18 Q. I'm now going to show you what has been marked as  
19 Government Exhibit 701C.

20 Your Honor, this is a certified copy of a public  
21 record. We move it into evidence as such.

22 THE COURT: As what number?

23 MS. KOMATIREDDY: 701C-A. The document, itself,  
24 the certificate, is 701C, if the court would like to  
25 review it.



**Betesh - Direct/Ms. Komatireddy**

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1 THE COURT: Any objection?

2 MR. LaRUSSO: No.

3 MR. HALEY: May I have a moment, Judge.

4 (There was a pause in the proceedings.)

5 MR. HALEY: Your Honor, I need to approach

6 briefly. Thank you.

7 (Continued on the following page.)

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1 (Discussion at sidebar ensued as follows.)

2 MR. HALEY: Our Honor, the exhibit that is being  
3 offered, my only objection is this.

4 Yesterday afternoon we were provided this  
5 package, which does include everything there, and includes  
6 the Led Better, this was provided by the government, the  
7 Led Better operating agreement along with these other  
8 aspects of the closing.

9 My question is, it just seems to be incomplete.

10 MS. KOMATIREDDY: Let me clarify.

11 There are four attachments to that email. We  
12 will move each one in pursuant to the rules.

13 This is a certified public record, and we are  
14 moving it in separately as such.

15 That is a copy. A copy of the deal was provided  
16 with connection with the email is a certified copy.

17 THE COURT: He is looking for the rest of the  
18 copy.

19 MS. KOMATIREDDY: I will put these all in in a  
20 few moments.

21 MR. HALEY: And I will have no objection.

22 (Discussion at sidebar was concluded.)

23 (Continued on the following page.)  
24  
25

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1 (The following ensued in open court.)

2 THE COURT: 701C and 701C-A are admitted.

3 (Government Exhibit 701C and 701C-A in  
4 evidence.)

5 MS. KOMATIREDDY: Thank you, judge.

6 BY MS. KOMATIREDDY:

7 Q. Looking at your screen, can you recognize this?

8 A. Yes.

9 Q. What is it?

10 A. This a copy of a recorded deed from the transaction.

11 Q. When you say the transaction, what transaction are  
12 you referring to?

13 A. This was the purchase of the property in Sag Harbor  
14 by Led Better Development.

15 Q. I'm going to go to page two of the document.

16 THE COURT: Is there a document 701 or is this  
17 701C?

18 MS. KOMATIREDDY: It is 701C. The digital  
19 version is 701. That is all.

20 BY MS. KOMATIREDDY:

21 Q. The second page of the document. I'm just going to  
22 zoom in on what is marked as box six.

23 Is that your name there?

24 A. Yes, it is.

25 Q. Were you the recording -- you had this deal returned

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1 to you after it was recorded. Is that fair?

2 A. Yes, I did.

3 Q. And above that, there is a date. What does that date  
4 signify?

5 A. That is usually the closing date.

6 Q. Below that is a consideration amount: \$750,000.

7 Do you see that?

8 A. Yes, I do.

9 Q. What does that amount signify?

10 A. The purchase price of the transaction.

11 Q. Just looking at the parties to this transaction. Who  
12 is the seller? Who is the buyer?

13 A. The seller was the North Point Properties Inc.

14 The buyer was Led Better Development Company  
15 LLC.

16 Q. Now I'm going to hand you four documents. They are  
17 marked 702, 703, 704, and 705.

18 Do you recognize those?

19 A. Yes, I do.

20 Q. What do you recognize those things to be?

21 A. When representing an LLC, as an attorney I request to  
22 get a copy of the organizational documents.

23 So this would be an operating agreement. This  
24 would be a proof of certificate of formation Led Better  
25 Development Company.

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1           Also, at the closing we would need a consent to  
2           the transaction, so these are consents signed by the  
3           managing members of the LLC.

4           Q.   Who gave you those documents?

5           A.   The certificate of formation and the operating  
6           agreement was provided, I believe, by Philip, by Phil  
7           Kenner.

8                     The consent I prepared.

9           Q.   The signed version of the consent letter before you,  
10          who gave you the signed version of those documents?

11          A.   It must have been from Phil Kenner and Lauren  
12          Gilmore.

13          Q.   Approximately when did you receive those documents?

14          A.   It would have to be before the closing, so before  
15          October 25.

16          Q.   Of 2006?

17          A.   Of 2006.

18                     MS. KOMATIREDDY: Government moves 702, 703,  
19          704, and 705 into evidence.

20                     MR. HALEY: I am pretty certain what these are.  
21          May I just approach the witness?

22                     Thank you.

23                     THE COURT: Sure.

24                     MR. HALEY: No objection.

25                     MR. LaRUSSO: No objection, your Honor.

**Betesh - Direct/Ms. Komatireddy**

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1 THE COURT: 702, 703, 704, 705 are admitted.  
2 (Government Exhibit 702, 703, 704, 705 in  
3 evidence.)

4 BY MS. KOMATIREDDY:

5 Q. Turning your attention to Government Exhibit 702.  
6 Can you just describe for us what is this.

7 A. That's proof of the formation of Led Better  
8 Development Company LLC.

9 Q. When does it indicate that it was filed with the  
10 State (sic) of Delaware?

11 A. October 10, 2006.

12 Q. This is a document showing that Led Better  
13 Development Company LLC was formed, and this formation was  
14 filed, you say, in Delaware in October 2006?

15 A. Yes.

16 Q. Turning your attention to Government Exhibit 703.  
17 What is this?

18 A. This is the operating agreement for Led Better  
19 Development Company LLC.

20 Q. You received this from Phil Kenner. Correct?

21 A. I believe so.

22 Q. Turning your attention to Article 3.

23 What is the title of Article 3?

24 A. Managing Members and Members.

25 Q. Who are the managing members of Led Better

**Betesh - Direct/Ms. Komatireddy**

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1 Development Company LLC?

2 A. Phillip A Kenner, 99 percent. Lauren Gilmore, one  
3 percent.

4 Q. Are there any other managing members listed in this  
5 operating agreement as a managing member of Led Better  
6 LLC?

7 A. No.

8 Q. Is Michael Peca a managing member?

9 A. Not according to this document.

10 Q. Turning your attention to Article 5:  
11 Confidentiality.

12 Do you see that?

13 A. Yes, I do.

14 Q. Would you please read the first sentence in that  
15 section of Article 5.

16 A. *"This agreement to acquire North Point Properties,*  
17 *Inc, and the subsequent acquisition of the underlying*  
18 *property are thereof is highly sensitive and shall be*  
19 *strictly confidential between and amongst all of the LLC*  
20 *members."*

21 Q. Just for the record. The only LLC members are Phil  
22 Kenner and Lauren Gilmore. Correct?

23 MR. HALEY: Objection.

24 THE COURT: Sustained as to leading.

25 MR. HALEY: Well --

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1 THE COURT: You have your objection.

2 MR. HALEY: Judge, there is a second page to  
3 this document, I believe.

4 Perhaps the USA misspoke. If you look at the  
5 document entirely. I would more than pleased to show the  
6 court the document in its entirety.

7 MS. KOMATIREDDY: We will go to the second page  
8 next, your Honor.

9 BY MS. KOMATIREDDY:

10 Q. Just to --

11 MR. HALEY: I objected, your Honor, and I  
12 believe the objection was sustained.

13 MS. KOMATIREDDY:

14 Q. Just to make sure were on the same page.

15 In terms of members of the LLC, who were the  
16 members, managing members the LLC?

17 MR. HALEY: I have no objection to that specific  
18 question. I withdraw the objection.

19 MS. KOMATIREDDY:

20 Q. Who were the managing members of the LLC?

21 A. Philip Kenner and Lauren Gilmore.

22 Q. There is a section called *Equity Ownership and*  
23 *Dividends*. Right?

24 A. Yes.

25 Q. The section on Equity Ownership and Dividends.



**Betesh - Direct/Ms. Komatireddy**

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1 Can you read the last sentence there in the  
2 list.

3 A. *Equity ownership rights as of the date herein as is*  
4 *(sic) follows.*

5 Q. Go ahead.

6 A. Philip A Kenner, 25 percent.

7 Brian Berard, 25 percent.

8 John Kaiser, 25 percent.

9 Vincent J. Tosoriero, 25 percent.

10 Q. Is Michael Peca an equity owner of this agreement?

11 A. No.

12 Q. Does Michael Peca appear anywhere in this operating  
13 agreement?

14 A. Not that I see.

15 Q. And just, for the record, this Article 6, Equity  
16 Ownership, does that list any additional managing members  
17 of this LLC?

18 A. No, it does not.

19 Q. The previous page talks about confidentiality. Who  
20 is it, according to this agreement, that the agreement  
21 shall be confidential between and among?

22 A. The LLC members.

23 Q. And that is, according to this agreement, Philip  
24 Kenner and Laura Gilmore?

25 A. Yes.

**Betesh - Direct/Ms. Komatireddy**

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1 MR. HALEY: I would object. I object, your  
2 Honor.

3 THE COURT: You can cover it on cross.

4 MR. HALEY: Thank you, sir.

5 BY MR. MISKIEWICZ:

6 Q. Finally, what is the date of this operating  
7 agreement?

8 A. October 11, 2006.

9 Q. And you see a signature there at the top?

10 A. Yes.

11 Q. It says Philip A Kenner underneath the signature?

12 A. Yes, it does.

13 Q. Turning to Government Exhibit 704. You said you  
14 prepared this document.

15 What was the purpose of this documented?

16 A. This is a consent of the managing members authorizing  
17 the signer of the LLC and the purchase of the property.

18 Q. Can you just read the first paragraph for us, under  
19 *Signatory for LLC*, for the record.

20 A. *"Resolved, that Limited Liability Company is hereby*  
21 *authorized to purchase that certain area known as 18 North*  
22 *Haven Way, Sag Harbor, New York 11963 for a purchase price*  
23 *of \$750,000 and zero cents?"*

24 Q. You were talking about being the real estate attorney  
25 facilitating the Led Better Development Company

**Betesh - Direct/Ms. Komatireddy**

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1 transaction.

2 Was the property involved in that transaction  
3 this property that you have written here?

4 A. It must be.

5 Q. 18 North Haven Way, Sag Harbor, New York 11963?

6 A. Yes.

7 MS. KOMATIREDDY: The government moves two maps  
8 into evidence, they have been marked 941 and 940, with the  
9 consent of the defendant Kenner.

10 THE COURT: Correct?

11 MR. HALEY: Yes, your Honor.

12 MR. LaRUSSO: Yes, your Honor.

13 THE COURT: 941 and 942 are admitted.

14 (Government Exhibit 941 and 942 in evidence.)

15 BY MS. KOMATIREDDY:

16 Q. Government Exhibit 940. Just read the address at the  
17 top of this Google Map printout.

18 A. 18 North Haven Way, Sag Harbor, New York 11963.

19 Q. Mr. Betesh, what state was this property in?

20 A. New York.

21 Q. Not Hawaii?

22 A. No.

23 MS. KOMATIREDDY: No further questions.

24 THE COURT: Cross-examination.

25

**Betesh - Cross/Mr. Haley**

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1 CROSS-EXAMINATION

2 BY MR. HALEY:

3 Q. Mr. Betesh, sir, good afternoon.

4 A. Good afternoon.

5 Q. The closing that took place with reference to the  
6 transaction between North Point Properties and Led Better  
7 Development Company LLC, where did the closing physically  
8 take place?

9 A. At the seller's attorney's office.

10 Q. Do you remember the name of that seller, the seller's  
11 attorney?

12 A. Mr. Connor. Maybe Andrew Connor.

13 Q. And who was present at the closing?

14 A. I do not recall.

15 Q. Well, do you recall if Mr. Kenner was present?

16 A. I do not recall.

17 Q. Well, do you recall, sir, if John Kaiser was present?

18 A. After reviewing my file, I saw a copy of his ID in  
19 the file.

20 I do not recall if he was there, but there was a  
21 copy of his ID in my file.

22 Q. Well, was a power of attorney from John Kaiser  
23 utilized to execute transfer documents on his behalf in  
24 the course of that closing?

25 A. No, because it is a corporation, but sometimes

**Betesh - Cross/Mr. Haley**

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1 documents are presigned.

2 Q. So Mr. Kaiser may or may not have been present during  
3 the closing. Is that your testimony?

4 A. Correct.

5 Q. But we can agree, can we not, sir, that at least  
6 Mr. Kaiser's attorney would have received all the exhibits  
7 and documents that you have identified as being part and  
8 parcel of the closing documents?

9 Is that true?

10 MS. KOMATIREDDY: Objection.

11 THE COURT: Overruled.

12 You can answer if you know.

13 A. Can you repeat the question, please.

14 BY MR. HALEY:

15 Q. Sure. Whether Mr. Kaiser was there or not, can we  
16 agree that at least Mr. Kaiser's attorney would have  
17 received a copy of these closing documents or had access  
18 to these closing documents?

19 Is that correct?

20 A. He would have access.

21 Q. And I take it that would mean unfettered access. You  
22 won't hide a particular document from him, would you, sir?

23 A. No.

24 Q. And specifically, he would have had access to the  
25 operating agreement that sets forth the percentage of

**Betesh - Cross/Mr. Haley**

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1 equity interest. Is that true?

2 A. That operating agreement would be given to the title  
3 company at the closing, so he would have access to it.

4 Q. Incidentally, would the operating agreement, itself,  
5 be recorded by the title company, if you know?

6 A. No, it wouldn't.

7 Q. You don't know? Or it would not?

8 A. It would not.

9 Q. Sir, is or is it not customary during the course of a  
10 closing to make a copy of all of the closing documents and  
11 provide it to either the seller's or purchaser's attorney,  
12 depending upon who you represent?

13 MS. KOMATIREDDY: Objection.

14 THE COURT: Overruled. You can answer.

15 A. Yes, it is.

16 As an attorney I always request copies of LLC  
17 documents whether it is a purchaser or seller.

18 Q. Do you have any reason to believe that Mr. Kaiser's  
19 attorney that day did not request a copy of those  
20 documents?

21 MS. KOMATIREDDY: Objection.

22 THE COURT: Overruled. You can answer.

23 A. I do not recall. I have no idea.

24 Q. No. But it would be customary for an attorney to do  
25 so. Correct?

1 A. I would, as an attorney.

2 Q. I'm sorry, sir?

3 A. I would, as an attorney, request copies of documents.

4 Q. Sir, how often have you been handling real estate  
5 transactions involving the transfer -- well, the transfer  
6 of real estate?

7 A. Approximately 17 years.

8 Q. And within your 17 years of experience, is or is it  
9 not customary for the attorneys that are representing the  
10 parties to request a copy of the closing documents?

11 A. Yes, it is.

12 MR. HALEY: May I have a moment, judge?

13 (Counsel and client confer.)

14 MR. HALEY: Mr. Betesh, thank you for your  
15 testimony, sir.

16 THE WITNESS: You are welcome.

17 THE COURT: Mr. LaRusso, any questions?

18 MR. LaRUSSO: No.

19 THE COURT: Redirect?

20 MS. KOMATIREDDY: No, judge.

21 THE COURT: You can step down.

22 (The witness was excused.)

23

24 THE COURT: We will take the lunch break and we  
25 will reconvene at 2 o'clock. Don't discuss the case.

1 Have a good lunch.

2 (The following ensued in the absence of the jury  
3 at 12:55 pm.)

4 THE COURT: Everyone can be seated.

5 Mr. Miskiewicz, I didn't mean to be impatient  
6 with you on the redirect, but the first redirect was too  
7 long. It is a five-week trial. If redirects are too  
8 long, then the recrosses are long and we end up, he was on  
9 the stand, I don't know, I didn't keep track, it seemed  
10 like 45 minutes from the time they sat down on the cross.

11 And the whole thing of comparing the page was a  
12 classic example. I don't know why a witness who had no  
13 familiarity with the document is comparing fonts on  
14 signature pages. That causes Mr. LaRusso to get up and do  
15 that.

16 You have to be more economical on the redirects  
17 because if you start getting into tangential issues or  
18 covering issues that are covered on direct, it extends the  
19 trial for long periods of time. Okay?

20 MR. MISKIEWICZ: I understand, judge.

21 Because these documents are coming in, I feel  
22 compelled. I understand your ruling, to go over it with  
23 him. He can't say anything about the truth or accuracy.

24 THE COURT: I know. I think you could have done  
25 that this with one or two questions instead of going



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1 through the terms of the document. I let that in  
2 yesterday. I think I said I would explain further and  
3 then I had to leave early. But when the suggestion was  
4 made that the only reference to this individual was Mr.  
5 Constantine potentially talking on the phone to nobody,  
6 which was the suggestion that you made in the questioning,  
7 I think it is fair for them to show that there was  
8 supplemental communications with Mr. Peca regarding this  
9 individual and what was being proposed.

10 And I understand once I let that in you do need  
11 to establish that he still never met that guy. But it has  
12 to be done in a more economical way because I have seen it  
13 many times, the redirect is longer than the recrosses are.  
14 If it was a short trial it wouldn't make that much of a  
15 difference but I don't want to get off schedule.

16 MR. MISKIEWICZ: Understood.

17 THE COURT: Let's resume at 2 o'clock.

18 (Lunch recess taken at 1 pm.)

19 (Continued on next page.)  
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1 A F T E R N O O N S E S S I O N

2 THE COURT: All right. Ready for the jury?

3 MR. MISKIEWICZ: Yes, your Honor. Just briefly,  
4 we just discussed with counsel who we intend to call for  
5 the rest of the day. There is one witness who is Dolores  
6 Kaiser, who is 80 years old, we do have her sitting in  
7 court all day. I'm not sure, depending upon whether or  
8 not Ms. Peca is quick or not we can slip her in. On the  
9 other hand, we may be if Ms. Peca is ending at 4:00, we  
10 may be short. We'll have her here.

11 MR. HALEY: Joint application.

12 THE COURT: So we'll just end with Ms. Peca  
13 then.

14 MR. MISKIEWICZ: I think so.

15 THE COURT: Can I truthfully represent to the  
16 jury that we're still on track for five weeks?

17 MR. MISKIEWICZ: Yes, I had a real optimistic  
18 three week plan that I think we've blown, but it's on  
19 track for five weeks.

20 MR. HALEY: Your Honor, I'm sure the Court  
21 recognizes that I'm keeping my remarks to a minimum.

22 THE COURT: I got a little frustrated with the  
23 redirect, and I know Mr. Peca was on the stand for a long  
24 time, but I think both sides are doing very well than  
25 trying to be efficient and minimize the sidebars. So I'm

1 overall pleased. But let's try to keep that up, because  
2 the jury will stay happy as long as we continue to operate  
3 in that fashion. All right. Let's bring them in. Is  
4 someone getting Mrs. Peca?

5 MR. HALEY: Is it your intent to introduce this?

6 MS. KOMATIREDDY: Either introduce it,  
7 your Honor, this is about --

8 MR. HALEY: Judge, we might need a sidebar, it  
9 involves the issue that is becoming a recurrent issue.

10 (Continued on next page.)  
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1 (Whereupon, the following occurred at sidebar.)

2 (Document handed to the Court.)

3 MS. KOMATIREDDY: Your Honor, this relates to  
4 the issue of Mr. Peca receiving from Mr. Kenner as we  
5 previously explained, the government, without getting into  
6 separate frauds, desires to simply provide the benign  
7 explanation just an explanation for why Mr. Peca is  
8 receiving payments from Mr. Kenner. He didn't identify  
9 Waterstone bank as the bank loan associated with that  
10 condo, Kristin Peca would be able to do that. I wanted to  
11 tie up the record.

12 THE COURT: That's okay. But again Mr. Haley  
13 objected, I don't want her explaining about what the  
14 dispute was.

15 MS. KOMATIREDDY: Understood.

16 THE COURT: The only relevance is that money  
17 went to the condominium and not to something else.

18 MR. HALEY: Perhaps your Honor can give a  
19 curative instruction that the Palms dispute is not part of  
20 this indictment.

21 THE COURT: Sure.

22 I'll say it again, just remind me.

23 MR. HALEY: Thank you.

24 (Continued on next page.)

25

1 (Whereupon, the following occurred in open  
2 court.)

3 THE CLERK: All rise.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: Everyone can be seated. The  
6 government please call its next witness.

7 MS. KOMATIREDDY: Yes, your Honor, the  
8 government calls Kristin Peca.

9 THE COURT: Mrs. Peca, if you can come up to the  
10 witness stand over here and remain standing until the oath  
11 is administered.

12  
13 **KRISTIN PECA,**

14 called as a witness, having been first  
15 duly sworn, was examined and testified  
16 as follows:

17 THE CLERK: Please state your name and spell it  
18 for the record.

19 THE WITNESS: Kristin Peca, K-R-I-S-T-I-N,  
20 P-E-C-A.

21 THE COURT: You can be seated, Ms. Peca. If you  
22 can just pull your chair close to the mike and keep your  
23 voice up. Thank you.

24 Okay, Ms. Komatireddy.  
25

**K. Peca - Direct/Komatireddy**

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1 DIRECT EXAMINATION

2 BY MS. KOMATIREDDY:

3 Q. Good afternoon.

4 A. Good afternoon

5 Q. Mrs. Peca, where do you live?

6 A. We live in Clarence, New York.

7 Q. We is who?

8 A. My husband and two kids.

9 Q. Please identify your husband?

10 A. Michael Peca and the kids are Trevor and Emily.

11 Q. When did you meet Michael, around what time?

12 A. Around 1995.

13 Q. When you met Michael, did he have a financial  
14 advisor?

15 A. He was just getting introduced to one.

16 Q. Who was he getting introduced to?

17 A. Phil Kenner.

18 Q. Were you present in any conversation involving  
19 Michael and Mr. Kenner?

20 A. Yes.

21 Q. Did you meet with Mr. Kenner?

22 A. Yes.

23 Q. Would you recognize him if you saw him again?

24 A. Yes.

25 Q. Would you please look around the courtroom and let us

**K. Peca - Direct/Komatireddy**

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1 know, do you recognize anyone as Mr. Kenner?

2 A. Yes.

3 THE COURT: Can you just indicate for the record  
4 what he's wearing.

5 THE WITNESS: White shirt, brown olive pants.

6 THE COURT: The witness has identified  
7 Mr. Kenner.

8 Q. When you met with Mr. Kenner and Michael, what did  
9 Mr. Kenner tell you about himself?

10 A. He mentioned how he played hockey in college at RPI,  
11 he had a financial background, that's what he was majoring  
12 in, and that he was currently working with a company  
13 called Stage Street Financial Advisors.

14 Q. When you say that he mentioned his financial  
15 background, what did he tell you about his financial  
16 background?

17 A. That he went to school for that, that he was working  
18 at this firm now, Stage Street.

19 Q. Did he say anything about whether he was licensed?

20 A. I can't remember. He did say that he was working for  
21 a financial firm. So I think it would go along with being  
22 licensed.

23 Q. Did Kenner in fact become your and Michael's  
24 financial advisor?

25 A. He did.

**K. Peca - Direct/Komatireddy**

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1 Q. Now, just so we have a bit of understanding about the  
2 background, are both of you and Michael involved in the  
3 financial decisions in you are family?

4 A. Yes.

5 Q. What kind role do you play?

6 A. Well, basically I take care of our monthly bills, the  
7 utilities, gas, water, that sort of thing. When the mail  
8 comes in, usually his mail, so to speak, that he gets, he  
9 goes over the investment stuff, but when it comes to  
10 decisions on how we want to invest and save for the  
11 future, that is something that we talk about together.

12 Q. In terms of your financial role what, did you have in  
13 mind when you began investing in terms of what your goals  
14 were?

15 A. Our goals were on the same page in terms of having  
16 enough money for him to retire comfortably and not have to  
17 be forced to work after playing hockey.

18 Q. What formed your goals, anything about your  
19 background or your upbringing?

20 A. Yes. I was a saver. I still am a saver. I grew up  
21 in a household where we're definitely middle, pretty well  
22 off, I would say. My father was a dentist. And then my  
23 parents went through there long, drawn out divorce, and I  
24 saw us from going to being pretty comfortable to having  
25 nothing. The lawyers took it all.



**K. Peca - Direct/Komatireddy**

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1           So that was kind of just engrained in my memory.  
2       You can do well for a moment and everything is great and  
3       all of a sudden you're penny pitching and cutting back.  
4       For me, I had a strong sense to save and save and save.

5       Q.    So when you and Michael began investing, give us a  
6       timeframe. Approximately what year did you start thinking  
7       about investing savings?

8       A.    I met Phil in it was about '96, '97. From the  
9       beginning he actually made a good point in saying Michael  
10      had first had no money put away despite his first year in  
11      the NHL, even though he was on the low end he had an entry  
12      level NHL contract it was still a good amount of money for  
13      a kid, aim to be make, a hundred, 125 thousand. But after  
14      taxes and agent fees and all of that, and supporting his  
15      family as well, he, at the end of the day, had no money in  
16      the bank.

17           So Phil said if you were to get injured tomorrow  
18      you wouldn't have enough money sufficient for college,  
19      basically saying you'd be screwed. So that was good  
20      advice, and that also hit home with Michael and he  
21      definitely took on what he said and started saving as  
22      well. So it was from the beginning, if that's what you're  
23      asking when did you start saving, in the beginning  
24      immediately before we started dating for college, when we  
25      didn't have any money.

**K. Peca - Direct/Komatireddy**

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1 Q. What kind of investments did you make with  
2 Mr. Kenner?

3 A. In the beginning it was all like stocks, bonds, I  
4 think what would be known as a typical investment  
5 portfolio.

6 Q. How did those investments do in the first few years?

7 A. Everything seemed to do well and was growing at a  
8 normal, steady pace.

9 Q. And what was your view in that first, those first few  
10 years when Mr. Kenner was your financial advisor, what was  
11 your view of what kind of job that he was doing?

12 A. In the beginning, it seemed good. He was delivering  
13 as he said he would. He was helping us start to save  
14 money, put money away for the future.

15 Q. How often did he communicate you about your  
16 investments?

17 A. Often, in the beginning he talked quite a bit. He  
18 was reachable then. And we had at least a handful of  
19 face-to-face meetings every year, too.

20 Q. When you say you talked quite a bit, phone, e-mail?

21 A. Yes, both.

22 Q. Did there come a time when Mr. Kenner proposed  
23 different kinds of investments to you, things other than  
24 stocks and bonds?

25 A. Yes.

**K. Peca - Direct/Komatiredy**

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1 Q. Did he explain why?

2 A. Yes. I actually remember this story well because the  
3 metaphor he used. He said you are now at the point in  
4 Michael's career where you guys need to start  
5 diversifying, the metaphor was you can't have all your  
6 eggs in one basket, too dangerous, you have to spread it  
7 out in other investments, whether it's real estate or what  
8 have you.

9 Q. What was happening in Michael's life at that time?

10 A. That was when he was just signed his first big  
11 long-term contract in the NHL, that was here with the  
12 Islanders.

13 Q. Do you remember what was happening with Mr. Kenner  
14 and his job at the time?

15 A. He had at least one or two firm switches by then. I  
16 think that he was still with the Side Street by then. I  
17 can't tell what you firm it he was with or he started  
18 going on his own at that point. Because at some point he  
19 did start his own thing.

20 Q. You said that the point came when he proposed  
21 different kinds of investments. Generally speaking what  
22 kinds of investments did he begin to propose under the  
23 theory that you not put all your eggs in one basket.

24 A. Outside of stocks and bonds, different businesses,  
25 companies that were starting up but looked promising,

**K. Peca - Direct/Komatireddy**

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1 land.

2 Q. I'm going to focus your attention on a real estate  
3 development project in Hawaii. Does that ring a bell?

4 A. Yes.

5 Q. What did Mr. Kenner tell you about investment  
6 opportunities in real estate in Hawaii?

7 A. He had mentioned that there was this amazing  
8 opportunity to purchase some land for an incredible price,  
9 that it was, he'd be able to get it a lot lower than its  
10 value and he was going to put a group of guys together  
11 from his clients to invest.

12 Q. Who did he tell you his clients were, who were the  
13 guys?

14 A. He was referring to other players.

15 Q. What kind of, you mean hockey players?

16 A. Yes.

17 Q. Professional hockey players?

18 A. Yes.

19 Q. Did he indicate specific people that you and Michael  
20 knew?

21 A. He did.

22 Q. And what did he say that you had to do to invest in  
23 this project?

24 A. Well, the main part of investment was \$100,000 and  
25 that was supposed to get us 12 to 13 percent of 35 percent

**K. Peca - Direct/Komatireddy**

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1 which was what this company or group he was putting  
2 together would own the land.

3 Q. And was there another part of the investment?

4 A. Yes. The other part that he mentioned was -- and  
5 this is going to be a little more difficult to explain,  
6 but our line of credit, he needed to gather -- he said he  
7 needed to get a line of credit -- I'll explain what that  
8 is in a moment -- would help with the development in --  
9 vertical development, infrastructure, construction to get  
10 the land going, and the land and/or Lehman Brothers would  
11 come in with their funding that he was looking into and we  
12 would get the money paid off that would be done. The  
13 alternative was a loan from the bank but you'd have to put  
14 up collateral, that we had to put up collateral up to get  
15 the loan, but your collateral would never be used, he  
16 assured us our collateral was our bond account and he said  
17 a penny would never ever go missing, I remember that  
18 clearly, there was a line of credit, the money for the  
19 loan, the line of credit was established and so we needed  
20 a month to think about it, a month of payments for 6  
21 months which was the length he said the line of credit he  
22 asked.

23 Q. You said the collateral for this line of credit was  
24 your bond account?

25 A. Correct, the bond portion of the portfolio, the bond

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1 and the stock market.

2 Q. So in terms of what you had saved up, up to that  
3 point, what was the significance of the bond?

4 A. That so to speak was my baby, because back in Long  
5 Island, again I mentioned before I'm a saver and after one  
6 of our meetings with Phil we were noticing how our bonds  
7 were about 30 percent of the account and the majority was  
8 stocks, again, what I did with my parents divorce, I  
9 wanted to break it down and get back to 70 percent of the  
10 portfolio. So I had the idea to have Phil change that 30  
11 to 50 percent, it would make my feel safer. And even  
12 though Phil said you want to make money more quickly,  
13 better, faster, I was okay with that, being the security,  
14 the safety of knowing it was safer with the bond, if  
15 anything happened with the stock market.

16 So we went ahead and did that. To me that was  
17 my peace of mind, our safety net.

18 Q. When Mr. Kenner first proposed to you to move the  
19 safety net and make it collateral for the line of credit,  
20 were you able to do that?

21 A. No. I said right away, no, no, no, no, no, not  
22 touching that, that's my baby. I put that together.  
23 That's our safety net, I don't like that. And he  
24 reassured us over and over no, no, no, this not the money  
25 account, the line of credit, that's collateral, nothing is

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1 going to happen to it, not a penny will go missing,  
2 Kristin it's okay, this is only six months, he kept  
3 reassuring me, nothing will happen to it. The bank needs  
4 to hold on to it in order for us to get the money for the  
5 project.

6 Q. Did you ultimately decide to invest and move your  
7 bond account?

8 A. Yeah, we did.

9 Q. Why did you do that, even though you were reluctant?

10 A. Well, ultimately he was our financial advisor so he's  
11 supposed to be looking out for our best interest and we  
12 hired him to secure our future, to help us invest and help  
13 us get the right amount of money into the retirement  
14 account and ultimately put your trust in him. We were  
15 paying him as our advisor to advise us.

16 Q. At the time that you invested your monies and moved  
17 your bond accounts for this Hawaii project, what it  
18 Mr. Kenner tell you about how the hundred thousand dollars  
19 and the line of credit would be used?

20 A. It was all to be used in the investment the project,  
21 and the stuff that he stressed to mainly again was  
22 vertical development, construction, infrastructure.

23 Q. You say vertical development, construction and  
24 infrastructure. Where was that all supposed to take  
25 place?

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1 A. In Hawaii, in the land that he purchased.

2 Q. At the time that you invested your money and moved  
3 your bond account, did Mr. Kenner tell you that your money  
4 or line of credit would be used for land in Sag Harbor?

5 A. Sag Harbor?

6 Q. New York?

7 A. No. This was the first I'm hearing of that, no.

8 Q. You said that the line of credit was supposed to last  
9 six months. And then do you recall what happened, what  
10 was supposed to happen after six months?

11 A. By then he said the funding would have come through  
12 from Lehman Brothers which would have been more than  
13 enough to pay off everybody's line of credit and  
14 everybody's collateral would be released. But in exchange  
15 for that that way, doing the line of credit we were  
16 supposed to gain an extra percentage in the investment.

17 Q. So after six months did you get your money back from  
18 the line of credit?

19 A. We did not.

20 Q. Did you move your bond account back?

21 A. We couldn't. It was stuck.

22 Q. So this investment happened, do you remember  
23 approximately what time you invested the money in Hawaii?

24 A. 2005, 2006. We were in Edmonton.

25 Q. We'll get back to Hawaii.



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1                   Let's talk about another part of your  
2                   investments. Do you recall a company named Eufora?

3           A.    I do.

4           Q.    Did there come a time where, when Mr. Kenner spoke to  
5           you about investing in Eufora?

6           A.    Yes.

7           Q.    When you first had that conversation what did he tell  
8           you about Eufora?

9           A.    Eufora was the name of this amazing concept that has  
10           never been introduced in the banking world, and that his  
11           business associate friend Tommy Constantine was I guess  
12           CEO, the head of it, and he held these two exclusive  
13           patents on this technology, the technology which it  
14           basically said it allowed people, it allowed lower income  
15           people or people with poor credit to earn back their  
16           credit, to build better credit through this credit card  
17           technology. Every time they used the credit card and make  
18           payments, their credit would improve. And he had the  
19           patents on that.

20                   He was told we were very interested in those  
21           patents, and once they signed contracts with Eufora and  
22           started issuing cards that Eufora would be getting a  
23           percentage of what the bank earned, their contract with  
24           the credit cards were.

25           Q.    You invested several times in Eufora, right?

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1 A. Twice.

2 Q. Twice. Okay so the first time you're discussing that  
3 project you're just describing, when did that happen, the  
4 first time or the second time?

5 A. That was, the first time, that was 2004.

6 Q. Around when was the second time?

7 A. 2008.

8 Q. And when you invested the second time, what were the  
9 circumstances in which you invested then?

10 A. Phil came back to us and he explained that this is  
11 about to explode, they finally started marketing, he  
12 didn't tell me about the commercial that had started  
13 airing, marketing the technology, the people saying if you  
14 don't have credit, here is a way to earn credit, that type  
15 of thing, and basically he presented it as almost he was  
16 doing us a favor. He said the company doesn't need that  
17 much money right now, just enough to get us over the last  
18 little legal bit, getting some paperwork done, contracts  
19 and things, so I'm only extending this offer to my most  
20 loyal and long-term clients, and Michael was one of them.  
21 We were one.

22 So he was presenting it as a favor, great  
23 opportunity, you know, you should almost feel lucky to be  
24 doing it. It's going to be to be huge. About to explode.

25 Q. Now, did he tell you what the money that he was

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1 raising would be used for?

2 A. Just like said those last, the little, little  
3 hurdles, people were getting the last few things done to  
4 get the business doing.

5 Q. All for the business of Eufora?

6 A. Yes.

7 Q. You mentioned Mr. Kenner told you that Eufora was a  
8 valuable account?

9 A. Yes.

10 Q. Did he tell you at the time you invested those in  
11 Eufora whether those patents held were as collateral for a  
12 loan?

13 A. If they were held as collateral? No. No. Never.

14 Q. Would that have been important to you in deciding  
15 whether to invest money?

16 A. Yeah, of course.

17 Q. Why?

18 A. They were being held as collateral that would show  
19 that the company is in some sort of debt or owe money and  
20 is not doing as well and isn't ready to explode as they  
21 said it was.

22 Q. Did you and Michael ultimately invest in Eufora a  
23 second time in 2008?

24 A. Yes.

25 Q. Now, at the time that you and Michael invested in

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1 Eufora, did he show you the actual wire request that he  
2 submitted in order to make that investment?

3 A. I've seen them, yes, he must have shown me after.

4 Q. Did you see it at the time in 2008?

5 A. The actual wire request at the time, I can't, I'm not  
6 sure.

7 Q. I'm going show you what's in evidence as Government  
8 Exhibit 753. Take a look at that. Looking at that, does  
9 either you or Michael sign that wire credit?

10 A. No, no. That's Phil, Phil signed.

11 Q. Did he have authority to sign for you at that time?

12 A. He still had power of attorney from us to sign.

13 Q. By the way, Michael I gave him power of attorney to  
14 sign for him as an attorney in fact, right?

15 A. Um-hmm.

16 Q. Did he ever -- did Kenner have your authority or  
17 Michael's authority to sign Michael's name as Michael's  
18 name, as Michael Peca?

19 A. Well, I'm kind of confused by the question, but the  
20 power of attorney was signing --

21 Q. Fair enough. Let me rephrase it.

22 We'll go back to the document. Looking at this  
23 document, it appears that Mr. Kenner signed on your  
24 behalf, is that fair?

25 A. Yes.

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1 Q. At the time invested in Eufora did Mr. Kenner tell  
2 you that your money was to be going to an entity called  
3 Constantine Management Group?

4 A. No, no.

5 Q. Did you know what Constantine Management Group was in  
6 2008?

7 A. No.

8 Q. Do you know what it is now?

9 A. No.

10 Q. Did you authorize your money going to an entity  
11 called Constantine Management Group?

12 A. No.

13 Q. I'm going to hand you what's in evidence as  
14 Government Exhibit 1706. Just go ahead and review it.

15 (Handing.) (Pause.)

16 Have you ever seen that document before,  
17 Mrs. Peca.

18 A. I have not.

19 Q. Just looking at this, what does it appear to be?

20 A. It appears to be some sort bank account for Tommy  
21 Constantine.

22 Q. Let's focus on the first page. Just looking at the  
23 top, who is, what is the entity that this bank account is  
24 for?

25 A. Constantine Management Group.

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1 Q. Do you see the statement period in the top right?

2 A. I do. Yes.

3 Q. April 2008?

4 A. Um-hmm.

5 Q. Same month that you and Michael invested in Eufora,  
6 correct?

7 A. Yes, that's correct.

8 Q. And looking at the account number, does that account  
9 number match the account number on your wire, receipt your  
10 investment in Eufora?

11 A. Let me find that.

12 Q. It's also on the screen.

13 A. Okay. Yes.

14 Q. Going to page 2, I'm going to zoom in April 7th. Do  
15 you see that, Mrs. Peca?

16 A. Yes.

17 Q. Can you read that for the record, what does that  
18 appear to be?

19 A. That is a wire for \$100,000.

20 Q. From by whom to whom?

21 A. From Michael Peca at our old address or listing our  
22 address from our old bank account going into Tommy's bank  
23 account, Tommy Constantine's account.

24 Q. Going into the account of Constantine Management  
25 Group, right?

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1 A. Yes.

2 Q. And the date on this transfer, can you read that for  
3 the record as well?

4 A. The 4/7 or the 4/2?

5 Q. The date associated with your transfer?

6 A. Okay, 4/7.

7 Q. 4/7/2008?

8 A. Yeah. Yes.

9 Q. Go to the withdrawals and debits. Looking at again  
10 an entry for 4/7, that's the same day, right?

11 A. Correct.

12 Q. Do you see a wire on 4/7, that I'm highlighting for  
13 you. Can you tell us what that appears to be?

14 A. It's a wire of the same amount going to Phil Kenner.

15 Q. A wire for \$100,000 was going to Phil Kenner on the  
16 same day, correct?

17 A. Uh-huh.

18 Q. Did you authorize your money that you invested in  
19 Eufora to go to Phil Kenner?

20 A. No, never, never.

21 Q. Did Mr. Kenner ever tell you that the money that you  
22 invested in Eufora was going to him?

23 A. No, absolutely not.

24 Q. After you did money in Eufora did you receive any  
25 documentation reflect an interest in Eufora reflecting

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1 that investment?

2 A. Nothing as official as we would have liked, no.

3 Q. Did you ever receive an executed operating agreement  
4 your name on it?

5 A. No.

6 Q. Did you receive any stock certificates?

7 A. No.

8 Q. Did you receive any transfer of share documents?

9 A. We did not. We tried the hardest to get more  
10 official paperwork but never received any.

11 Q. Did you receive any tax forms to file your taxes as  
12 shareholder?

13 A. No.

14 Q. Do you have any record in your current possession  
15 that you have a shareholder?

16 A. Other than an e-mail from Tommy Constantine and Phil  
17 mentioning that we have it. Tommy Constantine had sent us  
18 some sort of spreadsheet that represented percentages that  
19 we owned, but it looked like something you can do on a  
20 spreadsheet your computer. It wasn't on official  
21 letterhead or anything.

22 (Continued on next page.)

23

24

25



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1 BY MS. KOMATIREDDY:

2 Q. You have nothing signed, executed, final?

3 A. No, nothing as official as we would have liked.

4 Q. Did you receive anything back from your investment in  
5 Eufora?

6 A. We had not received a penny.

7 Q. Any dividends?

8 A. Nothing.

9 Q. Did you receive any information after 2008 about your  
10 investment in Hawaii?

11 A. Do you want me to get into the line of credit  
12 situation?

13 Q. What was happening with the line of credit in 2008,  
14 2009, that you remember?

15 A. In 2008 and 2009 -- well, we were kept relatively in  
16 the dark because Phil had all the mail going to his home  
17 address because he was to be taking care of the monthly  
18 payments on the line of credit, so we did not know that he  
19 was missing payments and that the loan -- basically what  
20 happened was one day I got mail that I had to sign for.

21 I was home alone at the time. Michael wasn't  
22 home yet from practice. And I opened it up and the first  
23 thing I see in big bold letters was the word default.

24 My eyes were scanning through it. Realizing it  
25 had to do with the line of credit, it felt like everything

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1       went blank around me.

2               All I could think of was, oh my gosh, that was  
3       our safety net. He guaranteed that wouldn't be touched.

4               The letter talked about taking the money out of  
5       our bond account, and I can't even describe how I felt.

6       Q.    I'm going to bring you Government's Exhibit 717 also  
7       in evidence.

8               Is that the letter you're referring to?

9       A.    Yes.

10      Q.    Did you talk to Mr. Kenner after receiving this  
11      letter?

12      A.    I think I stood there holding that letter and didn't  
13      really move much until Michael got home. I was pretty  
14      much in shock.

15             When Michael got home, I just handed it to him  
16      and I started crying immediately.

17             And he called Phil right then and there and just  
18      started laying into him, how could this happen, you  
19      guaranteed this wouldn't happen, and used all sorts of  
20      choice language.

21             And Phil, when we heard back from him, he  
22      basically said, don't worry, buddy, it's safe in the  
23      investment. And he was trying to diffuse the situation  
24      and downplay it.

25             We didn't understand, A, not only how this could

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1 happen, but how he didn't have the decency to give us a  
2 heads-up and let us know we were about to get such a  
3 shocking notice in the mail.

4 Q. When he told you that it was safe in the investment,  
5 what investment did you think?

6 A. Well, Hawaii. If it was safe in Hawaii, it was safe  
7 in the investment.

8 Q. Did you fire him right then?

9 A. We did not.

10 Q. Why not?

11 A. This is going to take a minute to explain here.

12 For starters, we knew right then and there we  
13 had to take any protective measure that we could. We felt  
14 we were scared.

15 We took away power of attorney, we stopped  
16 forwarding checks for him to deposit and invest.

17 But at that time, when you're looking back at  
18 this stuff, we didn't have proper documentation for  
19 Hawaii, for Eufora and other things.

20 So our main goal was to get proper documentation  
21 of everything and then we could sever ties, because how do  
22 you prove your money is in this stuff until you have  
23 proper documentation.

24 So we did what we could to protect ourselves at  
25 that time.

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1           Like I said, took away power of attorney, he no  
2 longer received any of our paychecks, we cut that part  
3 off.

4           Then we just tried our hardest in chasing him  
5 down with e-mails and calls and texts trying to get proper  
6 documentation of the investments from that point forward.

7       Q.   Now, earlier you testified that at the beginning of  
8 your relationship you met with Mr. Kenner pretty often,  
9 communicated with him pretty often.

10           Around this time in 2009, what was your  
11 communication with Mr. Kenner like?

12       A.   It had changed dramatically.

13           He was no longer answering our calls. He also  
14 no longer got back to us that same day. In fact, it often  
15 took weeks and there were stretches where we didn't hear  
16 from him in months. He was not responding to e-mails in a  
17 timely manner.

18           It was very, very difficult to track him down.  
19 It leaves you with a sense of desperation when you're  
20 financial advisor is avoiding you like that.

21           And I vividly remember him telling me when I was  
22 questioning why I can't get a hold at him, at one point he  
23 said he was hiding in a cave in Mexico because someone was  
24 trying to kill him.

25           It was just scary hearing all these stories he

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1 had and the finger pointing, blaming others, all these  
2 elaborate conspiracies. Everything was really scary at  
3 that point.

4 And, you know, he even said to me at one point  
5 if I were to go down in a plane tomorrow, there would be  
6 no way to get your money. I'm the only one who knows  
7 where your money is. That is like having a string holding  
8 over you. It's a scary position to be in.

9 Q. Now, a few months later in that year, 2009, was there  
10 a time when Mr. Kenner and Mr. Constantine came to your  
11 home?

12 A. Yes.

13 It was May.

14 Q. Was that the first time that you met Mr. Constantine?

15 A. First time I met him, yeah.

16 Q. How did he introduce himself to you?

17 A. He was very charismatic. Hi, I'm Tommy Constantine,  
18 business partner of Phil's, head honcho at Eufora.

19 And mentioned that he was partners with us in  
20 the Vegas Palms units that we were invested with in Phil,  
21 or so I thought, and that's how he introduced himself.

22 And he was here to help, he needed to talk to us  
23 with Phil and speaking on Phil's behalf that day because  
24 Phil was ill.

25 Q. What did Mr. Constantine and Mr. Kenner say about why

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1 they were there at your home that day?

2 A. The main reason they were there, the reason they were  
3 there is they started explaining and they came up with a  
4 new plan on how to get this money back that we were so  
5 upset about.

6 And Tommy did all the explaining, even though I  
7 was just meeting him for the first time, because he said  
8 Phil was, A, not feeling well; but that it was because he  
9 was so rundown, he's at his wits end financially,  
10 physically and emotionally trying to fight to get our  
11 money back, and that he can't do it anymore, and that's  
12 the reason they're here was to help come up with a  
13 solution that would work to get our money back.

14 Q. What solution did they propose?

15 A. It was called the Global Settlement Fund, GSF for  
16 short.

17 And do you want me to explain it now?

18 Q. How did the defendants explain it to you?

19 A. Tommy was explaining that this Global Settlement Fund  
20 would be everybody who was involved in this Hawaii  
21 investment would contribute legally to the fund to get the  
22 money back because -- and this really relates back to the  
23 line of credit so if I can go back to that.

24 Phil had said that that line of credit money was  
25 loaned to a fellow named Ken Jowdy, and we need to get

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1 that money back.

2 So he said the only way to do is to sue to get  
3 that money back, and it's his fault that the line of  
4 credit defaulted because he didn't pay it back.

5 So now he's saying, Phil is saying, he spent all  
6 his own personal money on this lawsuit in trying to get  
7 the money back and he couldn't do it anymore.

8 And rather than going to each guy who lost money  
9 with the line of credit and saying, hey, we have a legal  
10 bill for 5,000 or 10,000, and if everybody would put up  
11 250,000 for the legal battle, we have a big enough pot  
12 that the lawyer can use this money, go after Jowdy for the  
13 money that was loaned to him, and that we all would be  
14 made whole again.

15 Q. Now, just two months earlier when you got this letter  
16 and you asked Mr. Kenner about your line of credit, you  
17 said he told you it was safe in the investment, right?

18 A. Yes, he did, but the story changed.

19 Q. So the plan was to create this fund.

20 Did he specify who else was going to be part of  
21 the fund?

22 A. They said it was going to be everybody who lost money  
23 with their lines of credits.

24 Q. Are these people that you knew?

25 A. Michael would know better the hockey players, yeah.

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1 Q. So there are other hockey players?

2 A. Yeah.

3 Q. Did he tell you how much that you had to invest?

4 A. Yes.

5 He said it had to be 250,000 and everybody had  
6 to do it, everybody had to pledge the same amount or else  
7 it wouldn't work. They kept on saying that.

8 Q. And where was the money supposed to be sent? Did  
9 they tell you that?

10 A. They did.

11 Q. What did they say?

12 A. This is one of the things that Tommy sold to kind of  
13 legitimize it.

14 He said it was going to be kept at attorney  
15 Ronald Richards' escrow account at his law offices, and  
16 that was the exact attorney we were using to sue Jowdy.

17 So that from that aspect made sense, it was held  
18 safe in a lawyer's escrow account. It wasn't an  
19 investment, it was for a lawsuit for a legal fund.

20 Q. You said it wasn't an investment.

21 Did the defendants discuss various investments  
22 with you in that conversation in your home in May 2009?

23 A. Well, again, Tommy was doing 95 percent of the  
24 talking so that's who I'm referring to. Phil wasn't  
25 saying much. He knew how mad we were with him and he was,



**K. Peca - Direct/Komatireddy**

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1 just like now, very little eye contact.

2 MR. HALEY: I object, your Honor.

3 THE COURT: Sustained. The jury will disregard  
4 that.

5 Don't comment on his demeanor in the courtroom,  
6 okay?

7 THE WITNESS: Okay. Sorry.

8 MR. HALEY: Thank you, Judge.

9 BY MS. KOMATIREDDY:

10 Q. Let's focus on what Mr. Constantine told you.

11 What did he tell you about the purpose of the  
12 funds in the Global Settlement Fund?

13 A. The main purpose was that it was a legal fight, it  
14 was to be used for a lawsuit to get the money back from  
15 Ken Jowdy.

16 At one point, like you were saying there, he did  
17 start mentioning some other minor items as incentives if  
18 we were willing to put this large money upfront instead of  
19 waiting until the legal bills came in. He was mentioning  
20 like you would be getting one percent share in an airplane  
21 or something else.

22 And I quickly interjected and said we're not  
23 interested in anymore investments or we're done with them.  
24 That letter you were just showing that was up here, that  
25 was it for us. We were done with investments.

**K. Peca - Direct/Komatireddy**

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1                   So then he quickly knew that didn't hold much  
2 weight to us and he focused on the legal aspect of it  
3 again.

4                   He did mention Eufora quickly too when he  
5 brought up the airplane.

6       Q.     So how long was this conversation?

7       A.     They were there for the afternoon. There were there  
8 for at least a couple of hours.

9       Q.     At the end of the conversation, what did you believe  
10 the money that was going to the Global Settlement Fund was  
11 to be used for?

12      A.     It was to be used for the legal fight to get our  
13 money back from Jowdy, and that's why it was being sent to  
14 the attorney's escrow account, for that very attorney to  
15 lead the legal fight.

16      Q.     Did Mr. Constantine tell you, at that time, when you  
17 were deciding whether to invest, that he would be in  
18 control of the money in that account?

19      A.     No.

20               We were just meeting him.

21      Q.     Would that have been important to you in deciding  
22 whether to invest?

23      A.     Yes.

24               Considering we were just meeting him, yes.

25      Q.     I used the word invest. You testified it wasn't an

K. Peca - Direct/Komatireddy

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1 investment.

2 Would that have been important to you in  
3 deciding whether to contribute to this legal defense fund?

4 A. Yes.

5 Q. Did you and Michael in fact contribute to this legal  
6 invest fund?

7 A. We did.

8 Q. Now, a few months earlier you just found out that  
9 your bond account was in default?

10 A. Correct.

11 Q. And you're meeting Mr. Constantine for the first time  
12 in your home?

13 A. Yes.

14 Q. Why did you contribute to this new idea?

15 A. For a couple different reasons.

16 Even though I was still hesitant all along, one  
17 is because, again, it's that same sense of this is it, you  
18 have to do it, this is to get your money back.

19 So it was being sold as this is part of a legal  
20 fight. This is not an investment. This is how you're  
21 going to get your money back.

22 So it places that whole thing and it was  
23 legitimized by saying it was going and being wired to that  
24 attorney's account.

25 But then it also came down to the fact -- and

**K. Peca - Direct/Komatireddy**

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1 this is where I trust my husband's judgment a lot -- but  
2 he's always been a team player and I don't know if that's  
3 the hockey aspect or not, but they said everybody does it  
4 or it doesn't work.

5 So even if we decided, no, we're not doing it,  
6 we're not potentially ruining our own chance of getting  
7 our money back, we would be hurting everybody else and  
8 Michael is too much of a team player to do that to other  
9 people.

10 Q. Now, turning your attention to Government's Exhibit  
11 754 in evidence. It's a wire transfer request.

12 Does that reflect yours and Michael's investment  
13 in the Global Settlement Fund in May 2009?

14 A. Yes, it does.

15 Q. Did either Mr. Constantine or Mr. Kenner follow-up  
16 with you by phone or e-mail about the use of the funds in  
17 the Global Settlement Fund?

18 A. Yes, by phone and e-mail.

19 Q. I'm going to show you what's already in evidence as  
20 Government's Exhibit 757, and take a minute to read it.

21 (Pause in proceedings.)

22 Do you recognize this e-mail?

23 A. I do.

24 Q. Do you remember getting it?

25 A. Yes.

**K. Peca - Direct/Komatireddy**

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1 Q. I'm going to focus your attention on a sentence in  
2 the middle that says you may not recall Tommy or I  
3 mentioning the Palms units in our conversation.

4 Do you see that?

5 A. I do.

6 Q. Did I read it accurately?

7 A. Yes.

8 Q. Now, earlier, you testified that when Mr. Kenner and  
9 Mr. Constantine were in your home, they spoke to you about  
10 the legal defense fund and a couple of investments.

11 Did they mention any further investment in Palms  
12 units in that conversation?

13 A. Never.

14 Q. Is it possible they mentioned it and you just forgot?

15 A. No, I would definitely remember that.

16 Q. Why?

17 A. Because we were already -- I think I touched on it  
18 before -- already invested in the Palms.

19 Q. Well, in terms of the e-mail then, at the time that  
20 you gave money to this fund, did you want to get more  
21 units at the Palms?

22 A. No.

23 Q. Would you have authorized any of the money that you  
24 gave to be used for units at the Palms?

25 A. No.

**K. Peca - Direct/Komatireddy**

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1 Q. I'm going to turn your attention back to Government's  
2 Exhibit 754. It's the wire transfer again.

3 I'm also going to show you what's in evidence as  
4 Government's Exhibit 1105.

5 Looking at the date of your wire transfer  
6 request here, it's May 8, 2009, correct?

7 A. Yes.

8 Q. You testified that the money for the Global  
9 Settlement Fund went to an attorney's escrow account,  
10 correct?

11 A. Yes.

12 Q. Looking at Government's Exhibit 1105, at the top it  
13 says First Century Bank funds transfer request, correct?

14 A. Yes.

15 Q. I'm going to go to page 4 of the exhibit.

16 This funds transfer request on page 4 is labeled  
17 wire transfer request, correct?

18 A. Yes.

19 Q. What's the date of that wire that's being sent or  
20 requested that date?

21 A. May 12th.

22 Q. That's four days after your investment in the Global  
23 Settlement Fund?

24 A. Yes.

25 Q. What was the account that wire is coming from?

**K. Peca - Direct/Komatireddy**

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1 A. It's coming from the Ronald Richards' account we had  
2 deposited the Global Settlement Fund into.

3 Q. So on May 8 you deposit the money you're putting into  
4 the Global Settlement Fund into the Ron Richards' account,  
5 right?

6 A. Correct.

7 Q. On May 12, the Ron Richards' account is making an  
8 outgoing wire, correct?

9 A. Yes.

10 Q. What's the amount of that wire?

11 A. 45,000.

12 Q. Who is that wire to?

13 A. Gilmarten -- I can't understand the middle name --  
14 and Ross.

15 Q. Do you know who that is?

16 A. No.

17 Q. Do you know the purpose of that payment?

18 A. I do not, no.

19 Q. When you gave money to the defendants to be  
20 contributed to the Global Settlement Fund, did you  
21 authorize any payments to Gilmarten Magence & Ross?

22 A. This is the first -- I don't even know who that is.

23 Q. And that wire transfer was May 12, right?

24 A. Correct.

25 Q. What's the date of the e-mail that references the

**K. Peca - Direct/Komatireddy**

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1 Palms for the first time?

2 A. May 18th.

3 Q. The first time you're hearing that the money in the  
4 Global Settlement Fund is going to be used for the Palms  
5 or may be used for the Palms is May 18th?

6 A. Correct.

7 It even says in there you may not recall,  
8 because it wasn't mentioned.

9 Q. This e-mail mentions a number of things. I want you  
10 to read it carefully. Take your time.

11 A. Okay.

12 (Pause in proceedings.)

13 Q. And tell me when you're finished.

14 A. Okay.

15 (Pause in proceedings.)

16 A. I'm done.

17 Q. Now, when the defendants first came to your home and  
18 told you about the Global Settlement Fund in May 2009, did  
19 they say anything about the money in that fund being used  
20 to pay Mr. Constantine's rent?

21 A. No, never.

22 Q. After reading that e-mail carefully, Government's  
23 Exhibit 757, is there anything in there about funds in the  
24 Global Settlement Fund being used to pay Mr. Constantine's  
25 rent?



**K. Peca - Direct/Komatireddy**

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1 A. Nothing.

2 Q. Did the defendants, when they were in your home at  
3 the time you made the decision to invest in the Global  
4 Settlement Fund, say anything about using the fund's money  
5 to pay for race cars for Mr. Constantine?

6 A. No.

7 Q. Does that e-mail, Government's Exhibit 757, say  
8 anything about using Global Settlement Fund money for race  
9 cars for Mr. Constantine?

10 A. Nope, no mention of it.

11 Q. When they were in your home talking to you about the  
12 Global Settlement Fund, did they say anything about using  
13 the money for a personal lawsuit involving car racing for  
14 Mr. Constantine?

15 A. No, not at all.

16 Q. How about that e-mail?

17 A. No, no mention of it.

18 Q. What about to help facilitate the purchase of  
19 Mr. Constantine's home, did they mention that in your home  
20 in May 2009?

21 A. No.

22 We would not be helping someone else purchase  
23 their home.

24 Q. Is that mentioned in that e-mail in Government's  
25 Exhibit 757?

**K. Peca - Direct/Komatireddy**

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1 A. No, it's not.

2 Q. Would you have authorized your money to be used for  
3 any of the purposes I just mentioned?

4 A. No, 100 percent not, of course not.

5 Q. Would it have altered your decision on whether or not  
6 to invest in the Global Settlement Fund if they had told  
7 you those things at the time you made the decision to  
8 invest?

9 A. Of course it would have, yes.

10 Q. When Mr. Kenner and Mr. Constantine were in your home  
11 in May 2009, did they tell you anything about using the  
12 money in the Global Settlement Fund to pay Mr. Kenner's  
13 credit card bills?

14 A. No, that was not mentioned either.

15 Q. How about in that e-mail, is that in that e-mail?

16 A. No.

17 Q. Did they say anything about using the money in the  
18 Global Settlement Fund to pay for a Tequila company that  
19 Mr. Kenner was starting in Mexico?

20 MR. HALEY: Judge, I object.

21 These are a litany of leading questions. I  
22 didn't object up to this point in time. I don't mind a  
23 non-leading question about what was discussed.

24 Secondly, they're suggesting matters that are  
25 not in evidence and may not ever be in evidence in this

**K. Peca - Direct/Komatireddy**

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1 case.

2 THE COURT: I'll overrule the objection on  
3 leading.

4 She's asking her about particular items. Again,  
5 there's a non-leading way to ask about particular items.

6 So I'll overrule the objection, but I will  
7 remind the jury that a lawyer's question is not evidence.  
8 She's permitted to ask that question, but the question in  
9 and of itself is not evidence.

10 MR. HALEY: Thank you, sir.

11 MS. KOMATIREDDY: Thank you, Judge.

12 BY MS. KOMATIREDDY:

13 Q. Did there come a time that Mr. Kenner ever tell you  
14 what happened to the money in the Global Settlement Fund,  
15 did he tell you whether there was any left?

16 A. Eventually we were told it was all used up.

17 Q. Did there come a time when you recorded conversations  
18 you had with Mr. Kenner?

19 A. Yes.

20 Q. What led you to do that?

21 A. The growing number of red flags and the situation  
22 such as those that had been mentioned so far, it gave me a  
23 feeling of obviously nervousness and fear and I felt the  
24 need to take some protected measures.

25 If we're missing all these official documents,

**K. Peca - Direct/Komatireddy**

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1 maybe we can at least get it on tape and use it in court  
2 some day and hopefully get our money back.

3 Q. I'm going to hand you a CD that's been marked  
4 Government's Exhibit 506 and four exhibits 506.1, 2, 3 and  
5 4-T.

6 Take a look at those. Let me know if you  
7 recognize them.

8 A. I do.

9 Q. What is Government's Exhibit 506?

10 A. What is what?

11 Q. What is on Government's Exhibit 506?

12 A. My initials. I initialed these for you.

13 Q. That's right.

14 What's on the CD?

15 A. Oh, taped record conversations I recorded with Phil.

16 Q. Now, in total, do you remember approximately how many  
17 hours of conversation you recorded with Mr. Kenner?

18 A. Several.

19 Q. Those are just excerpts of those conversations,  
20 correct?

21 A. Yes.

22 Q. Are those true and accurate excerpts of longer  
23 conversations you had with Mr. Kenner?

24 A. Yes, they are.

25 Q. Looking at Government's Exhibit 506.1, 2, 3 and 4-T,

**K. Peca - Voir Dire/Haley**

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1 do you see your initials and dates on those as well?

2 A. Yes.

3 Q. Are those -- have you reviewed those transcripts  
4 before coming into court today?

5 A. I did.

6 Q. Do they correspond in your view? Are you satisfied  
7 that they accurately reflect the conversation on the  
8 clips, 506.1 --

9 A. Yes.

10 MS. KOMATIREDDY: The government moves the CD  
11 506 into evidence and transcripts 506.1, 2, 3 and 4-T as  
12 aids to the jury.

13 THE COURT: Any objection?

14 MR. LA RUSSO: No, your Honor.

15 MR. HALEY: Very brief voir dire, Judge.

16

17 VOIR DIRE EXAMINATION

18 BY MR. HALEY:

19 Q. Good afternoon.

20 A. Hi.

21 Q. The disk you have on the witness bench, did you put  
22 that disk together? Who put that disk together?

23 A. I taped the calls on my phone.

24 Q. No. But that particular disk does not contain all  
25 the telephone conversations you had with Phil Kenner, does

**K. Peca - Voir Dire/Haley**

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1 it?

2 A. No, it does not contain all of them I don't believe.

3 Q. Well, what's contained on that disk is excerpts of  
4 these conversations you had with Phil Kenner over an  
5 extended period of time?

6 A. Yes.

7 Q. What was the duration of time that occurred where you  
8 began to secretly record the conversations with Phil  
9 Kenner up to the point in time you stopped?

10 A. Well, it was approximately July 2012, around there.

11 Q. That's when it began?

12 A. That was around the time frame that it happened, yes.

13 Q. And do you recall approximately how many hours of  
14 tape recorded conversations you had with Phil Kenner?

15 A. No, just several.

16 Q. You can't put a time frame as to the amount of time?

17 A. Four or five hours.

18 Q. Do you know how much --

19 MR. HALEY: I'm almost finished, Judge.

20 BY MR. HALEY:

21 Q. Do you know how much time is captured on this  
22 particular disk with reference to those four, five hours  
23 of conversations?

24 A. I do not.

25 MR. HALEY: I have no objection, Judge.

**K. Peca - Direct/Komatireddy**

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1 THE COURT: 506 is admitted and the transcripts,  
2 again, are just aids. And with the same instruction I  
3 gave you yesterday applying today, they're just an aid to  
4 the jury, they're not evidence. And if you hear something  
5 different on the tape from what's on the transcript, what  
6 you hear controls.

7 How long are the tapes? Should we take the  
8 break first?

9 MS. KOMATIREDDY: They're short, but we can take  
10 the break.

11 THE COURT: Let's take our afternoon break.  
12 Let's try to keep it to 15 minutes. Thank you. Don't  
13 discuss the case.

14 THE WITNESS: Do I have to stay here?

15 THE COURT: No, you can step down.

16 (The jury is excused.)

17 (Government Exhibit 506 in evidence.)

18 (Recess taken.)

19 (After recess.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. Let's bring in  
22 the jury.

23 (The witness resumes the stand.)

24 THE COURT: How much longer do you have on  
25 direct?

**K. Peca - Direct/Komatireddy**

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1 MS. KOMATIREDDY: Your Honor, approximately 30  
2 minutes. We're trying to do it quickly.

3 THE CLERK: All rise.

4 (The jury is present.)

5 THE COURT: Please be seated.

6 Go ahead, Ms. Komatireddy.

7 MS. KOMATIREDDY: Thank you, your Honor.

8 BY MS. KOMATIREDDY:

9 Q. Before we get to the recordings, I'm going to ask you  
10 a quick question.

11 Take a look at that. You mentioned -- I want to  
12 very briefly go over this.

13 Do you recognize the bank and the bank account  
14 on that document?

15 A. Yes.

16 Q. It's Waterstone Bank.

17 Did you and Michael have an account in Michael's  
18 name at Waterstone Bank?

19 A. Not an account, a mortgage. That's where the  
20 mortgage was held for the Palms unit.

21 Q. To the extent that -- I think that's all we need to  
22 go over.

23 Going back to the recorded phone calls, I'm  
24 going to go play Government's Exhibit 506.1.

25 (Tape played.)



**K. Peca - Direct/Komatireddy**

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1 (Tape stopped.)

2 The first voice on that recording, who is that?

3 A. That's me.

4 Q. Who is it that responds?

5 A. Phil Kenner.

6 Q. When he says it went to the project, what is your  
7 understanding of what project he's referring to?

8 A. The Hawaii project that we have been talking about,  
9 the line of credit.

10 Q. When he says that the money in your line of credit,  
11 Michael's line of credit, went to the Hawaii project, is  
12 that consistent with what he told you when you first  
13 agreed to set up that line of credit?

14 A. Yes, it is.

15 MR. HALEY: Objection, your Honor.

16 Withdrawn.

17 BY MS. KOMATIREDDY:

18 Q. I'm going to keep going.

19 (Tape played.)

20 (Tape stopped.)

21 Now, when you say I thought you said it got  
22 loaned, did Mr. Kenner tell you that he would loan the  
23 money and line of credit out at the time you set it up?

24 A. No, he did not.

25 Q. When do you remember hearing that?

**K. Peca - Direct/Komatireddy**

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1 A. This story had changed. I can't remember exactly how  
2 long after, but that was the next version we heard.

3 Q. Would that have been important to you to know at the  
4 time you agreed to set up that line of credit, if it was  
5 going to be used or loaned, that money was going to be  
6 loaned to someone else?

7 A. Absolutely.

8 Q. Why?

9 A. Because this money was supposed to be for the project  
10 and only for the project.

11 We would have never agreed to loan money,  
12 especially that large amount of money, to somebody we  
13 never even met in person, or I haven't.

14 Q. Just remind us, the line of credit, what is securing  
15 that line of credit?

16 A. My safety net. It was our safety net, our bond  
17 account from our portfolio.

18 Q. Let's continue playing.

19 (Tape played.)

20 (Tape stopped.)

21 He says, I don't have anything.

22 At that point did you have any sort of  
23 transaction history documents showing what happened to  
24 yours and Michael's line of credit?

25 A. No, we did not.

**K. Peca - Direct/Komatireddy**

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1 Q. I'm going to hand you what's been marked and admitted  
2 into evidence as Government's Exhibit 2001.

3 Take a minute to look at it.

4 Have you ever seen that document before?

5 A. No, I have not.

6 Q. Look at the top.

7 A. Loan transaction history.

8 Q. What does it say on the left side?

9 A. Michael.

10 Q. What does that appear to be?

11 A. It appears to be records of the line of credit and  
12 monthly transactions I should say.

13 Q. Is that the kind of information you were looking for?

14 A. This would have been nice to have, yes, absolutely.

15 Q. Did Mr. Kenner ever give you that document?

16 A. He did not.

17 Q. Did he give you that document after you asked for it  
18 in this phone call?

19 A. No.

20 He said he had nothing.

21 Q. When you go through that document now for the first  
22 time, does it raise any questions in your mind?

23 A. Can I take a minute to look at it?

24 Q. Go ahead.

25 (Pause in proceedings.)

**K. Peca - Direct/Komatireddy**

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1 A. The note increases, rate changes.

2 Q. Did you know about those specific note increases and  
3 rate changes at the time they were happening?

4 A. I never heard anything about a rate change  
5 whatsoever.

6 Q. Would it have been important to you to receive that  
7 information at the time that this happened?

8 A. Yes, it would have been very nice to have any  
9 information relating to this.

10 Q. What would you have done if you saw a note increase  
11 or a rate change in the amounts that you're seeing on the  
12 document?

13 A. Well, obviously, we would have had some conversations  
14 and figured out what exactly was going on.

15 Q. When you say conversations, conversations with who?

16 A. Phil Kenner.

17 Q. I'm going to hand you what's been marked for  
18 identification only as Government's Exhibit 5103L-A.

19 Have you ever seen that document before?

20 A. No, I haven't seen this either.

21 Q. Just looking at the document, at the top of it, is  
22 there a loan number on that document?

23 A. Yeah, account number.

24 Q. It's the same account number as in Government's  
25 Exhibit 2001?

**K. Peca - Direct/Komatireddy**

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1 A. Correct.

2 Q. Did Mr. Kenner ever give you that document?

3 A. He did not.

4 Q. Did he give you that document in response to your  
5 question on this phone call when you asked for  
6 documentation?

7 A. No.

8 He said he had absolutely nothing.

9 Q. All right. We're going to keep playing the call.

10 (Tape played.)

11 (Continued on next page.)

12

13

14

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25

**K. Peca - Direct/Ms. Komatireddy**

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1 (Audio playing.)

2 (Audio stopped.)

3 DIRECT EXAMINATION (Continued)

4 BY MS. KOMATIREDDY:

5 Q. For the record, the \$40,000 that Mr. Kenner tells you  
6 he paid on the lines of credit, do you know for a fact if  
7 he actually spent his own \$40,000 to pay make those  
8 payments?

9 A. No. I have no way of knowing that.

10 (Audio playing.)

11 (Audio stopped.)

12 BY MS. KOMATIREDDY:

13 Q. Now I'm going to play what has been marked into  
14 evidence as Government Exhibit.

15 (Audio playing.)

16 (Audio stopped.)

17 BY MS. KOMATIREDDY:

18 Q. Now, at that point. At any point did Mr. Kenner tell  
19 you about the specific transactions that you see in  
20 Government Exhibit 2001, the transaction history?

21 A. He did not.

22 Q. Did he tell you, if you look in October 2006, that he  
23 took \$395,000 from the line of credit?

24 A. No.

25 Q. At that point did he actual tell you, or at any

**K. Peca - Direct/Ms. Komatireddy**

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1 point, that the money from the line of credit was used for  
2 a property in Sag Harbor, New York?

3 A. No. Not at all.

4 Q. Finally, the government plays 506.2. It is in  
5 evidence.

6 (Audio playing.)

7 (Audio stopped.)

8 BY MS. KOMATIREDDY:

9 Q. Do you know whether that's true, whether Mr. Kenner  
10 got any money from the global settlement fund?

11 A. He said he didn't gets anything from it. I don't  
12 know whether that's true or not.

13 Q. Remind us again, what was the account associated with  
14 that global settlement fund?

15 A. It was for a legal fight to sue Jowdy.

16 Q. And what was the money, what account name were the  
17 monies going into?

18 A. It was being held at the law offices of Ronald  
19 Richards in California in an escrow account. He is the  
20 attorney that was leading the fight against Jowdy.

21 Q. I'm going to show you what has been marked as  
22 Government Exhibit 1102 and is in evidence.

23 Do you see this?

24 A. Yes.

25 Q. Bank statement for account of law office, of Ronald

K. Peca - Direct/Ms. Komatireddy

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1 Richards. Is that correct?

2 A. Yes.

3 Q. Just compare it to the wires reported with the same  
4 account number.

5 A. Yes.

6 It is.

7 It is small too to see.

8 No, that's a different number.

9 Q. All right. Let me try it again.

10 A. I'm looking at the wrong thing. I looked at --

11 Q. Let's try that --

12 A. Okay.

13 Q. The wire, Government Exhibit 754, on the left?

14 A. Yes.

15 Q. 702 is on the right. Are those the same account  
16 numbers?

17 A. Yes. Sorry. I was looking at our account number,  
18 not the Richards one.

19 Q. All right. So looking at the account statements for  
20 the Ron Richards account. Look at the first page.

21 In fact, see there on May 8, is that your  
22 investment?

23 A. Yes.

24 Q. I'm sorry, not *investment*. Contribution to the legal  
25 defense fund.



K. Peca - Direct/Ms. Komatireddy

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1 A. Correct.

2 Q. Is that a wire from you and Michael to the Ron  
3 Richards account \$250,000?

4 A. Yes. To the attorney's account.

5 Q. And the date of that transfer corresponds with the  
6 date of the wire request that we were looking at before?

7 A. It does.

8 Q. Going to page 10 of this exhibit. I'm going to draw  
9 your attention to an entry on July 30.

10 Can you tell us what the highlighted portion  
11 indicates.

12 A. Eufora LLR value load.

13 Q. All right. What's right after that?

14 A. Wire transfer to Phil Kenner.

15 Q. What is the date of that?

16 A. July 30.

17 Q. Did you know --

18 A. For 22,425.02.

19 Q. No, we didn't know. As you just heard, he was saying  
20 he got nothing.

21 MR. HALEY: Well, your Honor, I would object  
22 to -- I withdraw the objection.

23 I apologize. I withdraw the objection.

24 MS. KOMATIREDDY: No further questions, your  
25 Honor.

**K. Peca - Cross/Mr. Haley**

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1 THE COURT: Cross-examination.

2 MR. HALEY: Yes, sir.

3

4 CROSS-EXAMINATION

5 BY MR. HALEY:

6 Q. Can see Government Exhibit 2001. I think it is the  
7 long transaction history.

8 Mrs. Peca, good afternoon.

9 A. Hello.

10 Q. Mrs. Peca, my name is Rick Haley and I represent Phil  
11 Kenner.

12 You testified a moment ago that as relates to  
13 this document, the loan transaction history for the line  
14 of credit for you and your husband. Just several minutes  
15 ago was the first time you ever saw that document?

16 A. Was it the first time?

17 Q. Yes, ma'am.

18 A. Just now. Yes. Well --

19 Q. You received the Northern Trust default letter  
20 approximately six years ago from Northern Trust?

21 A. Yes.

22 Q. We agree that the Northern Trust default letter, and  
23 I know you testified clearly on direct it upset you so  
24 much, you received on or about March 19, 2009. Is that  
25 correct?

**K. Peca - Cross/Mr. Haley**

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1 A. Yes.

2 Q. And having received that letter, what if any steps  
3 did you take to contact Northern Trust officials directly  
4 to find out what occurred with respect to your line of  
5 credit?

6 A. Well, what we did, the action we took started with  
7 Phil Kenner, who was our advisor who should have been  
8 supplying us with the answers we needed. So our efforts  
9 were going toward asking him and getting information from  
10 him. At this point I felt as though we had the  
11 information the banks could supply, that it defaulted.

12 They can't say where the money went or why,  
13 what's going on with the project. That information could  
14 only be gotten from Phil.

15 Q. Well, when do you say he told you he was living in a  
16 cave in Mexico?

17 A. When did he tell me that?

18 Q. Yes.

19 A. I don't know the date. It was during the period  
20 where he became more evasive and extremely difficult to  
21 get ahold of.

22 Q. Well, let's time frame that comment that you say he  
23 said to you that I'm living in a cave in Mexico as relates  
24 to --

25 A. Not living. He was hiding there for two weeks.

**K. Peca - Cross/Mr. Haley**

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1 Q. Correct. I apologize. Your testimony was he told  
2 you he was hiding in a cave in Mexico.

3 My question is, can we time-frame that comment  
4 that you say he made to you with reference to the date you  
5 learned for the first time, by your testimony, that the  
6 bonds that constituted your nest egg were being seized?  
7 And that's specifically on or about March 19, 2009.

8 A. No, I don't think I would be able to accurately do  
9 that. That is not something I wrote a date down on. It's  
10 just another example of, again, one of the comments that I  
11 remember from him being hard to get ahold of.

12 Q. Were you alarmed when he told you that I'm hiding in  
13 a cave in Mexico?

14 Did that alarm you? Yes or no?

15 A. Yes.

16 Q. Did you believe him when he said I'm hiding in a cave  
17 in Mexico?

18 A. No.

19 Q. All right. So now, armed with this information from  
20 your financial advisor that I'm hiding in a cave in  
21 Mexico, what if any steps did you take independent of your  
22 relationship with your financial advisor to contact  
23 Northern Trust directly to obtain what is that loan  
24 transaction history report that you say you just saw or  
25 that you told us you just saw a moment ago?

**K. Peca - Cross/Mr. Haley**

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1 A. Our most immediate action was to take away the power  
2 of attorney so nothing else could be done.

3 Q. Okay. Take away the power of attorney.

4 A. Not forward any more pay checks to him so he can't  
5 have any more control of our money.

6 Q. Very well. And the next step was? Withdrawn.

7 You certainly at that point in time knew how to  
8 communicate with Northern Trust, because you just told us  
9 you contacted Northern Trust directly to have his power of  
10 attorney invalidated. Correct?

11 A. No. I didn't say we did it through Northern Trust.  
12 We did that through Phil.

13 Q. I see.

14 A. Michael asked for him to remove himself as power of  
15 attorney from anything related to us and our accounts.

16 It was not a Northern Trust thing. It was that  
17 we didn't trust him with anything any more.

18 Q. And as a result of that request of Phil, he followed  
19 your directions, I take it. Correct?

20 A. He did.

21 Q. Do you know if that occurred before or after he told  
22 be you he was hiding in a cave in Mexico?

23 A. Again, I don't remember exactly when he told me he  
24 was hiding in a cave in Mexico.

25 Q. Did you testify on direct that he, did at any point

**K. Peca - Cross/Mr. Haley**

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1 in time you request of Phil Kenner that he provide you the  
2 line of credit documents with respect to your line of  
3 credit directly to you from him?

4 A. Michael at this point was dealing with him and he was  
5 asking for any and all information we can get from him.

6 Q. And what was Phil's response?

7 A. Well, first of all, it was very hard to get ahold of  
8 him. Again, he was extremely evasive. But when we did,  
9 he said he had nothing. His documents were stolen.

10 Q. Really.

11 A. Yes.

12 Q. I'm sorry. He told you that his documents these,  
13 line of credit documents, were stolen?

14 A. I didn't specifically say the line of credit, but  
15 when we asked for them he said: As you recall, my house  
16 was broken into and all my documents were stolen. And he  
17 was assuming it was from the people that were suing him,  
18 Kristie Myrick or would be of the those people.

19 Q. And could you time frame that statement that you say  
20 he made with reference to the statement that he made  
21 regarding hiding in a cave in Mexico?

22 A. I can't. But we do have that in at least one email  
23 so I'm sure it can be looked up.

24 Q. Did you provide all of the emails in your possession  
25 with reference to communications between yourself and Phil

**K. Peca - Cross/Mr. Haley**

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1 Kenner to the investigating agents in this case?

2 A. Did I, personally, provide them?

3 Q. Yes.

4 A. I did forward them, yes.

5 Q. All of them?

6 A. As many as I can could find. Yes.

7 Q. I apologize if I asked the question. Did you believe  
8 him when he told you that he could not provide the  
9 Northern Trust line of credit documents because they were  
10 stolen in a burglary of his home?

11 A. To be honest, no. It just seemed like another one of  
12 his conspiracy theory stories.

13 Q. Does the name Aaron Mascarella mean anything to you?

14 A. It is familiar. Yes.

15 Q. If I were to tell you he is the official or became  
16 the account representative at some point in time with  
17 reference to your line of credit at Northern Trust bank,  
18 would that refresh your recollection?

19 A. Okay. Yes.

20 Q. Between the time you received the notice of default  
21 dated March 19, 2009, up until today's date, would you  
22 describe for the jury the content. The level of  
23 communication you had with Mr. Mascarella to obtain copies  
24 of your line of credit statements from Northern Trust.

25 A. Me, personally? None.

**K. Peca - Cross/Mr. Haley**

748

1 Q. Well, in your household, you are the one that really  
2 takes the initiative to pay attention to the finances.

3 Isn't that correct?

4 MS. KOMATIREDDY: Objection.

5 THE COURT: You can answer that.

6 A. Answer that?

7 THE COURT: Yes.

8 A. I take care of all the monthly bills, the utilities,  
9 that sort of thing. Yes.

10 Q. But you are also, are you not, Mrs. Peca, intimately  
11 involved in your husband's assets: Where they are --

12 A. Yes, we talk about it. Yes.

13 Q. Well, when you say we talk about it, you also,  
14 correct me if I'm wrong, are hands on when it comes to  
15 that. You pay attention to what's going on in connection  
16 with your financial records, as you told us on direct.

17 Isn't that true?

18 A. I'm hands on to an extent of, as I explained earlier,  
19 he handles all the mail that comes in with regards to  
20 portfolio statements, investments. I handle all the  
21 utilities, that sort of thing.

22 Q. Well, prior to today you and your husband had  
23 received a great deal of information, documents and  
24 material, from Phil Kenner regarding the Hawaii project.  
25 Correct?



**K. Peca - Cross/Mr. Haley**

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1 A. We got a bundle of paperwork that refers to the LLC.

2 Q. Which LLC?

3 A. The Little Aisle, the group that was invested  
4 together for that 12 to 13 percent of the 35 percent.  
5 That group.

6 Q. Did that include the operating agreement for the LLC?

7 A. I can't say for sure. It was a big book. There is a  
8 lot.

9 Q. Well, ma'am, only because we have to create a record.

10 You said there is a lot and you kind of put your  
11 hand up. Could you give us -- so I would say maybe, your  
12 words, 6 to 7 inches in depth of material relating to  
13 Little Aisle IV.

14 Is that your best memory?

15 A. We were handed a thick packet. Yes.

16 Q. Who gave you that thick packet of material regarding  
17 Little Isle IV?

18 A. Phil Kenner did.

19 Q. I'm sorry?

20 A. Phil Kenner.

21 Q. And to the best of your memory, there may or may not  
22 have been the operation agreement in that document, the  
23 Little Isle IV?

24 A. We told that it had to do with the LLC. It was all  
25 general. Our names weren't even on it.

**K. Peca - Cross/Mr. Haley**

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1 Q. Well, we you say it all has to do with the LLC, we  
2 are talking about Little Aisle IV LLC. Correct?

3 A. Yes.

4 Q. Did you read the information that was provided in  
5 that perhaps 6, 7-inch stack of documents?

6 A. No. That was my husband's job. He looked over that  
7 sort of thing.

8 Q. When he looked over that sort of thing, do you recall  
9 whether or not you and he had any discussion as to whether  
10 he comprehended what he was reading?

11 MS. KOMATIREDDY: Objection, hearsay.

12 THE COURT: No. That is okay.

13 You can answer that.

14 A. He started going through the first few pages and said  
15 this is very generic. This is not what I asked for. I  
16 asked for documentation specific to our investment.

17 And I remember him telling Phil saying this is  
18 not what I requested. I want documentation on our hundred  
19 thousand dollars in the investment. And then the line of  
20 credit aspect as well.

21 Q. Do you know where that 7-inch packet of documents is  
22 today?

23 A. It is somewhere in our den. We have since moved from  
24 the house that we used to live in when he gave us that  
25 document, so it is piled in boxes right now.

**K. Peca - Cross/Mr. Haley**

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1 Q. Do you think you can locate it?

2 A. Michael probably could.

3 Q. But you have no idea or belief that you destroyed it.  
4 Correct?

5 A. No. We wouldn't have destroyed it. I remember  
6 having a conversation with Phil about it, saying this is  
7 not what we wanted. We wanted proof, documentation of our  
8 investment and our percentage, our interest in the  
9 project.

10 Q. Ma'am. My question is simply did you destroy it?  
11 That was my question.

12 Did you destroy it to the best of your  
13 knowledge? Yes or no?

14 A. I did not destroy it.

15 Q. All right. Kindly take a look at what has been  
16 marked Kenner Exhibit 21. Just read it to yourself.

17 Having read that, ma'am, do you have any  
18 familiarity with who that text message may be from and  
19 between?

20 A. No, I don't.

21 Q. Well --

22 A. But I can see that you have his name, if you are  
23 asking if I have familiarity with that.

24 Q. Let me ask you this. Does this appear to be a  
25 telephone number? Is that telephone number familiar to

**K. Peca - Cross/Mr. Haley**

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1 you?

2 A. Yes, sir.

3 Q. Whose telephone number is that?

4 A. It's my husband's.

5 Q. Well, seeing your husband's telephone number on this  
6 document along with his name, is it fair to state that  
7 this appears to be a text message from your husband to at  
8 least someone else? Is that right?

9 MS. KOMATIREDDY: Objection, foundation.

10 MR. HALEY: Judge, this has been admitted into  
11 evidence.

12 MS. KOMATIREDDY: Not to the document. Just to  
13 the testimony.

14 THE COURT: If she is familiar with it, I will  
15 let her answer.

16 A. I'm not familiar with it. I have never been seen it  
17 before.

18 THE COURT: The objection is sustained.

19 MR. HALEY: Thank you.

20 BY MR. HALEY:

21 Q. Ma'am, are you familiar with the telephone number  
22 716-316-7227?

23 A. Yes. That's mine.

24 Q. Kindly take a look at this document marked Kenner  
25 Exhibit 22. And take your time.

**K. Peca - Cross/Mr. Haley**

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1 Is that a text message you sent to Phil Kenner?

2 A. It could have been. I don't recall.

3 This is six years ago. I can't recall who or  
4 what exactly I texted.

5 Q. Well, throughout the years that you had a  
6 relationship with Phil Kenner, were there times that he  
7 would send you documents by way of a FedEx and you would  
8 acknowledge receipt of those documents by way of a text  
9 message to him?

10 A. Yes. That's fair.

11 Q. And were there times when you would receive the  
12 documents from Phil Kenner via a FedEx and you would  
13 respond: I'm busy, in substance. I don't have time to  
14 read it now but I'll get back to?

15 You did things like that occur?

16 A. It could have. I don't remember that specifically.

17 Q. Well, were there instances where Phil Kenner would  
18 send you documents via FedEx, and for whatever reason you  
19 simply chose not to read the documents?

20 A. No. They would all be attended to eventually.

21 But if, for instance, the one you are speaking  
22 of is referencing that thicker Hawaii package, if I were  
23 leaving town the next day or whatever, I wouldn't have  
24 time to go through that right away.

25 Q. But at some point in time you returned to your

**K. Peca - Cross/Mr. Haley**

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1 household and then you would have time to go through it.

2 Correct?

3 A. Most likely Michael would, but if not I would.

4 Q. Well, did Michael ever prohibit you from reading any  
5 documents that he received from Phil Kevin? Yes or no?

6 A. No.

7 Q. You testified in your direct examination that your  
8 first interaction with Phil Kenner was one where your  
9 husband was receiving compensation, but at that point in  
10 time his big contract money had not yet come in, so the  
11 conversations you were having with Phil involved very  
12 conservative investments. Is that true?

13 A. In the beginning, yes.

14 Q. But there came a point in time where, to his credit,  
15 he did get big contract money. Correct?

16 A. Yes.

17 Q. And that started -- or did it start with the New York  
18 Islanders?

19 A. That was his biggest.

20 Q. And how big was that?

21 A. It was a four or five-year contract.

22 Q. For how much?

23 A. \$20 million, I believe. But the one year was a lot  
24 that year, so \$5 million came off, I believe.

25 Q. And when he now had a contract worth \$20 million,

**K. Peca - Cross/Mr. Haley**

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1 there were discussions between yourself and Phil regarding  
2 perhaps a change in the investment strategy. Is that  
3 correct?

4 A. Yes.

5 Q. And I believe you told us that what was discussed was  
6 investments in, let's say, real estate. Is that true?

7 A. Yes.

8 Q. When Phil Kenner recommended investments to you and  
9 your husband in real estate, did that strike you as  
10 reasonable?

11 A. It did.

12 Q. When Phil Kenner suggested to you investments in real  
13 estate, let's say in the State of Hawaii, did that strike  
14 you as reasonable?

15 A. Yes.

16 Q. And it struck you as reasonable because you saw a  
17 great potential for significant profit. Isn't that  
18 correct?

19 A. It was another way to invest our money but in a  
20 diversified way as he was recommending. Yes.

21 Q. Well, did you have an understanding that an  
22 investment of that nature could provide a return far in  
23 excess of what you would have earned through, let's say,  
24 interest on bonds or stocks?

25 A. Yes. That's what he was saying.

**K. Peca - Cross/Mr. Haley**

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1 Q. But that made sense to you, did it not?

2 A. Yes.

3 Q. When you had these discussions with him regarding  
4 that recommendation, did you at that point in time believe  
5 Phil Kenner was being deceitful?

6 A. No.

7 Q. And when he proposed to you or suggested to you that  
8 not having all your eggs in one basket may be advisable,  
9 did you find that to be reasonable?

10 A. Yes.

11 Q. Now, when he mentioned that the other NHL players  
12 were interested in this investment as well -- that is to  
13 say, the land investment in Hawaii -- did he mention the  
14 names of some of those other players?

15 A. He did. Yes.

16 Q. Do you recall any particular name?

17 A. I'm bad with the names. Michael is better at that.  
18 He knows them. He works with them.

19 Q. Do you know if the name Owen Nolan was mentioned?

20 A. It could have been. Yes.

21 Q. What about Joe Juneau?

22 A. I'm not sure if his was mentioned that time but I  
23 know he was one of Phil's clients and has been brought up  
24 in some situations.

25 Q. Incidentally, do you know the Nolans?



**K. Peca - Cross/Mr. Haley**

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1 A. I believe he played on the gold medal team with  
2 Michael. The Canadian gold medal team. I think I met him  
3 then.

4 Q. You said the gold medal. You are talking about  
5 Olympic Gold Medal. Correct?

6 A. Yes.

7 Q. So to the best of your knowledge and memory, both  
8 Owen Nolan and your husband were on that same Olympic  
9 team. Correct?

10 A. I think so. I can't say 100 percent. It was a very  
11 quick and busy time for me. But he would know all his  
12 teammates by heart. He would be a better person to ask.

13 Q. Now, with respect to the Hawaii Project, we will call  
14 it, the idea was that there would be open line of credit  
15 that would be your family's commitment, your and Michael's  
16 commitment to the Hawaii investment project. Correct?

17 A. Can you say that again?

18 Q. Sure. When you discussed the line of credit at  
19 Northern Trust with Phil, the idea would be that the line  
20 of credit at Northern Trust would be open so that Phil  
21 could access it for use of the Little Aisle IV Hawaii  
22 Development Project, and that would be your investment in  
23 that project. Correct?

24 A. Yes.

25 It was solely for the investment. Yes, the

K. Peca - Cross/Mr. Haley

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1 project.

2 Q. And in return for that, you would be receiving a  
3 percentage interest in that ownership under Little Aisle  
4 IV LLC. Correct?

5 A. We were supposed to get an increased percentage.  
6 Correct.

7 Q. Now, when it came to the bond that would  
8 collateralize that loan -- excuse me, that line of credit,  
9 Phil suggested to you that by utilizing the bond as  
10 collateral, the bond would continue to earn interest.  
11 Isn't that true?

12 A. The bond would, yes, continue to earn. Yes that's  
13 fair.

14 Q. They would collateralize a line of credit. Correct?

15 A. Correct.

16 Q. Thank you understand, ma'am, what the word  
17 *collateralize* meant? Yes or no?

18 A. That's hard to answer with a yes or no.

19 Q. Well, you did understand or did not understand?

20 A. Can I explain my answer?

21 Q. Well, do you understand the word, ma'am? Do you  
22 understand the word *collateral*?

23 A. I do.

24 Q. Now moving to the Eufora matter.

25 Did you at some point learn that Tommy

**K. Peca - Cross/Mr. Haley**

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1 Constantine held an ownership interest in a company known  
2 as Eufora?

3 A. Yes. He was the founder.

4 Q. Did you understand, ma'am, that was a privately-held  
5 company, as oppose to a publicly-held company, like  
6 Microsoft?

7 A. Yes.

8 Q. And Phil was proposing that you invest in Eufora to  
9 obtain a percentage of Tommy Constantine's ownership  
10 interest in that company. Correct?

11 A. It wasn't worded that way. It was never -- I see  
12 what you are saying. But it was worded as you should  
13 invest in this. It wasn't how you described it, a percent  
14 of his percentage, or however you just explained that.

15 Do you see what I'm saying?

16 No? Okay. I'm sorry.

17 Q. I will rephrase the question.

18 A. Okay.

19 Q. Did you believe that somehow a person by the name of  
20 Tommy Constantine had a role in terms of you acquiring an  
21 ownership interest in Eufora?

22 A. He was the owner, so yes.

23 Q. When you were asked questions about your money going  
24 to Constantine Management Group, did that seem to have  
25 some similarity to the word Tommy Constantine?

**K. Peca - Cross/Mr. Haley**

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1 A. Yes.

2 Q. Now as relates to Eufora.

3 You were asked questions on direct concerning  
4 \$100,000 that went from your account to Constantine  
5 Management Group, and then on the same day \$100,000 payout  
6 from that same account to Phil Kenner.

7 Do you recall those questions?

8 A. I do.

9 Q. Were you aware, ma'am, that on April 2, 2008, five  
10 days before the transfer of \$100,000 out of Constantine  
11 Management Group, that Phil Kenner had deposited \$100,000  
12 into the same account?

13 A. I'm not. Not aware.

14 Q. We can agree that money is fungible. Correct?

15 A. Is what?

16 Q. We can agree that you have an account that has an  
17 account balance and there may be a source of funds that go  
18 in and out of that account from various sources. Correct?

19 A. Yes.

20 Q. So that \$100,000, when you were asked questions by  
21 the government to suggest that it was your money that was  
22 then being used to pay Phil Kenner back that same day, you  
23 don't know that to be true at all, do you?

24 MS. KOMATIREDDY: Objection to form.

25 THE COURT: Sustained.

**K. Peca - Cross/Mr. Haley**

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1 BY MR. HALEY:

2 Q. Well, if I were to suggest to you, ma'am, the  
3 \$100,000 payment to Phil Kenner occurred on the same day  
4 that your money came into Constantine Management Group,  
5 that that \$100,000 payout to Phil Kenner was actually a  
6 return of the \$100,000 that he had paid in five days  
7 earlier, you wouldn't be able to dispute that, would you?

8 MS. KOMATIREDDY: Objection to form.

9 THE COURT: Yes. Sustained. This is just  
10 argument.

11 BY MR. HALEY:

12 Q. The conversations that you began recording secretly,  
13 that was your idea or your husband's idea or a joint idea?

14 A. My idea.

15 Q. And the excerpts that we listened to, do you know if  
16 that excerpt of the conversation occurred at the beginning  
17 of that conversation, middle of the conversation, toward  
18 the end of the conversation?

19 Do you have any idea?

20 A. I would have to listen to the tape again.

21 Q. Well, I take it when you started the conversation,  
22 the excerpt of which we have now in evidence, would you  
23 start out in an accusatory manner when you spoke to Phil,  
24 or would you start out in a more pleasant, familiar  
25 manner?

**K. Peca - Cross/Mr. Haley**

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1 A. There is always an exchange of: *Hi. How are you?*

2 So it wasn't the first thing out of my mouth, if that is  
3 what you are asking.

4 Q. For whatever reason, ma'am, I take it you decided not  
5 to say in substance to Phil Kenner before you commenced  
6 recorded the conversation: *Phil, there are some matters I*  
7 *want to talk to you about. So there is no*  
8 *misunderstanding between what I have to say and what you*  
9 *have to say, I'm going to record or conversation.*

10 You didn't say that, did you?

11 A. No, I did not.

12 (Continued on the following page.)

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**K. Peca - Cross/Haley**

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1 BY MR. HALEY:

2 Q. Did you retain all of the recorded conversations with  
3 between yourself and Phil Kenner from the moment that you  
4 began recording the conversations to the moment that you  
5 stopped recording the conversations?

6 A. I did. I accidentally erased one or two. Other than  
7 that, I saved them.

8 Q. Would you tell us how you recorded the conversations,  
9 what device you used, what your protocol was?

10 A. I used my phone for most of them. I also had a  
11 little -- an old-fashioned microcassette thing, mini-tape.

12 Q. And you utilized the minicassette recorder. How do  
13 you set that up?

14 A. I set the phone on speakerphone and I had it up  
15 against it.

16 Q. I take it you would turn it on before you called  
17 Phil. Did you hear the dialing be made or once you  
18 connected you'd turn it on?

19 A. I can't remember. That was years ago.

20 Q. Where are those cassettes today?

21 A. They are either in my den or they have been forwarded  
22 to the government by now. Because I was making copies of  
23 them, so I don't know if I forward copies or the actual  
24 tape.

25 Q. While you were making copies of them on to what type

**K. Peca - Cross/Haley**

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1 of medium?

2 A. A computer disk.

3 Q. Is or is it not your testimony that there's a disk  
4 that contains all of your recorded conversations involving  
5 yourself and Phil Kenner?

6 A. I can't remember if I was able to fit it all on one  
7 disk, so I can't answer that.

8 Q. The ones that you inadvertently erased, how did that  
9 happen?

10 A. It happened because I'm poor with technology. As I'm  
11 trying to transfer things, I erase them.

12 Q. The ones that you erased, was the content of those  
13 recordings significant?

14 A. Very similar to the stuff I already had. More of the  
15 same I should say.

16 Q. When you say more of the same, more conversations of  
17 the type that we listened to or conversations that didn't  
18 have anything to do with the Hawaii project or Mexico or  
19 Eufora or anything of that nature?

20 A. Yea, it had to do with outside investment that he got  
21 us involved in.

22 Q. So it's your testimony that each time you recorded a  
23 conversation with Phil Kenner, your intent, though he was  
24 unaware of it being secretly recorded was to talk  
25 specifically with him about these investments which, your



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1 mind at that point in time, you had a dispute with him,  
2 correct?

3 A. Correct. I was trying to get evidence any way that I  
4 could. We had no official paperwork, so ...

5 Q. Now, you testified on direct you and your husband  
6 committed \$250,000 to the Global Settlement Fund, correct?

7 A. Yes.

8 Q. And then days later you received from Phil Kenner  
9 that e-mail that detailed the use of the global settlement  
10 funds and for the first time you noticed the reference to  
11 the Palms units, correct?

12 A. Yes.

13 Q. And you told us on direct quite emphatically that had  
14 you known any of that \$250,000 was going to be utilized as  
15 relates to these Palms units, you would not have sent that  
16 250, correct?

17 A. We were expecting to be in being involved in the  
18 Palms. We already were.

19 Q. Ma'am, my question is this, did you say on direct,  
20 that had we known that part of our \$250,000 would be  
21 utilized in any way in the Palms, we would not have  
22 invested that 250, correct?

23 A. Correct.

24 Q. After you saw that e-mail and were so emphatic on  
25 that position, what in any steps did you take through Phil

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1 Kenner or any other source, Tommy Constantine, to obtain a  
2 return of that \$20,000 that you had wired some days  
3 previously?

4 A. My husband had made some phone calls and it was  
5 explained that don't worry about it, those are just  
6 incentives anyway, it wasn't explained that you get a  
7 certain amount back because of that if you don't want to  
8 be in it. It's out of the goodness of Tommy's heart.  
9 He's including us as benefactor of us get money or  
10 something.

11 Q. So the steps you took was placing a phone call?

12 A. My husband was taking care of it, yes, he called.

13 Q. Who did he call?

14 A. I believe he called both.

15 Q. Both?

16 A. Both Phil Kenner and Tommy Constantine.

17 Q. Did they answer the call?

18 A. I don't think they did in any, much them, no.

19 Q. How much time went by between the time that you say  
20 you made the phone call to Phil Kenner and the time that  
21 he got back to you.

22 A. You'd have to ask my husband that.

23 Q. Well, did your husband tell you I called Phil and he  
24 got back to me with reference to my question? Did he tell  
25 you that?

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1 MS. KOMATIREDDY: Objection, hearsay.

2 THE COURT: Overruled. You can answer.

3 A. Okay. He got an explanation and right now I can't  
4 tell you if it was from Tommy or Phil, but that the Palms  
5 unit, don't worry about it, it was just an extra that was  
6 being thrown in there anyway. The money itself was for  
7 the legal fight.

8 Q. And your understanding from conversations with your  
9 husband, these were telephone calls; is that correct?

10 A. Correct.

11 Q. Do you know if there was any e-mail communication  
12 between your husband and Tommy Constantine following that  
13 e-mail letter from Phil Kenner regarding the use of the  
14 GSL?

15 A. Can't say for sure, but I know he tried.

16 Q. When say you know he tried, you don't know one way or  
17 the other whether he got a response?

18 A. Correct.

19 Q. You were interviewed by the FBI before today; is that  
20 correct?

21 A. Yes.

22 Q. And that interview took place on September 6, 2013 if  
23 you know?

24 A. I don't remember the date.

25 Q. Did there come a point in time that you also provided

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1 to the FBI, the investigating agents, handwritten notes  
2 that you had taken?

3 A. Yes. I forwarded any information that I could find.

4 Q. And I take it the handwritten notes that you made  
5 were contemporaneous with events or not?

6 A. They coincided either, yes, phone meetings, yes.

7 Q. Well, do you recall --

8 MR. HALEY: Can we have this document marked?

9 Q. Ma'am, would you take a look at Kenner exhibit number  
10 23, and take your time. (Handing.)

11 A. Was there a question?

12 Q. Just if you can take a look at the document. Did you  
13 take a look at all pages?

14 A. No, I didn't hear.

15 Q. I'm sorry, please take a look at all pages. (Pause.)

16 A. Yes.

17 Q. I know it's a photocopy, Mrs. Peca, but do you  
18 recognize those notes?

19 A. I do.

20 Q. And who made those notes?

21 A. I did.

22 Q. Now, each page of the pages seem to have dates on  
23 them; is that correct?

24 A. From what I can see, yeah, yes. Not every page, but  
25 yeah.

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1 Q. Just by way of reference, the first page, meeting  
2 about Phil 2/12/08, do you see that?

3 A. Yes.

4 Q. And then the next page was the date 8/19/08, what  
5 would that reflect? A meeting or a telephone call with  
6 Phil on that date? What would that reflect?

7 A. I'm not sure. It doesn't say. Probably a phone  
8 call.

9 Q. I see. And with reference to that second page,  
10 8/19/08, that is your handwriting; is that correct?

11 A. It is my handwriting, correct.

12 Q. And do you see at the bottom of the page where you  
13 wrote Northern Trust docs FedEx to us send back to Phil  
14 regular mail?

15 A. Yes.

16 Q. Do you have a memory of the package of Northern Trust  
17 documents that were Fed Ex'd to you?

18 A. No. That's why there's a question mark after it.

19 Q. Are you saying that you did not receive those  
20 documents, ma'am?

21 A. Yes. Because I don't know for sure, but there's a  
22 question mark next to it and it ended with a question.

23 Q. Where it says send back to Phil regular mail, what do  
24 you mean by that note?

25 A. When we got the Northern Trust docs, that he was

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1 going to be FedEx'ing us, send them back to him regular  
2 mail.

3 Q. Well, did you do that, did you send it back to him  
4 regular mail or not?

5 A. I don't know what this is, refers to, to be honest  
6 with you.

7 Q. So you may or might not have received those Northern  
8 Trust documents, correct?

9 A. Yes, I'm not sure if these are the ones you're  
10 referring to.

11 Q. But as you sit here today Mrs. Peca, on that witness  
12 stand, under oath, is it your testimony that at no point  
13 in time, though you requested Northern Trust documents be  
14 Fed Ex'd to you, that Phil Kenner ever sent you those  
15 documents? Is that your testimony?

16 MS. KOMATIREDDY: Objection.

17 THE COURT: The objection?

18 MS. KOMATIREDDY: Overbroad.

19 THE COURT: You can answer.

20 A. Can you repeat it.

21 Q. Sure.

22 Is it your testimony on this witness stand under  
23 oath that at no point in time Phil Kenner ever sent you  
24 Northern Trust documents that may have been in his  
25 possession?

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1 A. Not the kind that we were looking for.

2 Q. Well, to the best of your memory, what kind of  
3 Northern Trust documents did he send to you?

4 A. I can't recall.

5 THE COURT: Okay. Why don't we break for the  
6 day, it's 4:30. No court tomorrow, so we'll be starting  
7 again on Monday at 9:30. On Monday we are going to be  
8 sitting until lunchtime, until about 12:30. So it will be  
9 a half a day on Monday. In terms of the estimate of the  
10 case, I did speak to the lawyers and we are still on track  
11 with the five week estimate that I gave you during jury  
12 selection. That estimate -- if it's off the estimate I'll  
13 let you know. Just so you are not worried, I knew that we  
14 were going to have a half day when I made the estimate.  
15 So enjoy the weekend, don't read or listen to anything  
16 regarding the case. Don't discuss the case among  
17 yourselves or with anyone. Have a good weekend. I'll see  
18 you all on Monday.

19 (Whereupon, the jury retired from the  
20 courtroom.)

21 THE COURT: Everyone be seated. You can step  
22 down, Mrs. Kenner. Thank you.

23 (Witness excused at this point.)

24 THE COURT: Just let me place a ruling on the  
25 record with respect to the government's objection to the

1 hearsay, her describing what the husband's conversation  
2 was. When -- the issue is what information was provided  
3 to what the government is alleging are two victims of  
4 fraud, what information she had, whether it was directed  
5 to her or hearsay, supplied to her husband, goes to the  
6 fact she had knowledge of certain facts that may or may  
7 not have been material. So what information she had  
8 regarding those investments overall, no matter who the  
9 source was, in other words, if it's -- something important  
10 about the investment was disclosed to her, if she learned  
11 about it even not from Mr. Kenner, but it was through her  
12 husband, that could be a defense, any argument by the  
13 government, that's why I overruled the objection, her  
14 state of mind related to the representations that were  
15 made to either her directly or made sure her husband  
16 communicated to her.

17 MS. KOMATIREDDY: Understood, thank you, your  
18 Honor.

19 THE COURT: My deputy mentioned to me one of the  
20 jurors told her that he has a graduation May 17th and  
21 18th, bottom line is he's going to have to miss a day for  
22 travel, which disturbs me in terms of jury selection, so  
23 I'll try to find out more detail. Obviously he will be  
24 coming back Monday, but we'll look into it on Monday.

25 MR. HALEY: It's really a moot point,



1 your Honor, but when I had as relates to conversations --

2 THE COURT: Let me ask my deputy about this  
3 juror issue. (Pause.)

4 It's juror number five, he's in the jury room  
5 but apparently it's juror number five, his brother is  
6 graduating and he's traveling for that graduation on May  
7 18th and May 19th. So the Monday and Tuesday. So he's  
8 coming back the morning of Tuesday so he's going to be  
9 unavailable on Tuesday, and he's requesting that we just  
10 not sit those days, which is not a good suggestion the  
11 18th and the 19th, Monday and Tuesday, not next week, the  
12 following week.

13 What I was thinking we can do is I can tell  
14 him -- I mean I can just hold him for next week and see if  
15 there's any other jurors and deal with it at the end of  
16 next week and if we haven't lost any more jurors, I can do  
17 it then.

18 MS. KOMATIREDDY: We agree.

19 MR. LA RUSSO: That's fine.

20 THE COURT: Should I bring him out, I don't want  
21 him to be worried about it all next week, I'm going to  
22 tell him we're going to deal with the situation when it  
23 arrives, that he's going to be able to go.

24 (Juror No. 5 enters the courtroom.)

25 THE COURT: Hi. So I think Michele explained to

1 you, let me make sure I understand, your brother is  
2 graduating and therefore you're going to be out of town on  
3 May 18th, Monday, you're returning Tuesday morning the  
4 19th.

5 A JUROR: Tuesday late morning early afternoon.

6 THE COURT: So you'll be unavailable Tuesday as  
7 well.

8 A JUROR: Yes.

9 THE COURT: And you didn't realize it during  
10 jury selection?

11 A JUROR: Yeah, my college was on trimester so  
12 my graduation was in June, so my parents bought our  
13 tickets for my sister and myself so I didn't think of it.

14 THE COURT: I'm not going to make miss the  
15 graduation, so we'll address the situation at the end of  
16 next week, so you're going to get to go. We'll see how  
17 things are going.

18 A JUROR: Thank you, your Honor.

19 (Juror No. 5 leaves the courtroom.)

20 THE COURT: Okay, Mr. Haley, you have an issue?

21 MR. HALEY: Well, your Honor, perhaps it's moot,  
22 but I do like to learn, meaning your Honor, I objected to  
23 when the government asked questions of Mr. Betesh  
24 concerning conversations that he had between my client and  
25 himself preceding the closing. I thought there may have

1     been privileged communication. I know he's representing  
2     the LLC. I know your Honor overruled on the objection.  
3     Perhaps because he was representing the LLC he wasn't  
4     truly representing Mr. Kenner in an individual capacity.

5             THE COURT: Yes.

6             MR. HALEY: I just wanted your Honor to  
7     understand that was the basis of my thought process.

8             THE COURT: I didn't understand him to be  
9     representing him personally. In any event, what came out  
10    wasn't privileged any way, it was just transactions.

11            MR. HALEY: Thank you, Judge. I want the Court  
12    to understand the basis of my objection.

13            THE COURT: All right. So do we have any issues  
14    for Monday? We only have a half day. How much longer do  
15    you have with her?

16            MR. HALEY: Not that much longer.

17            MR. LA RUSSO: Judge, probably about an hour.

18            THE COURT: And then who's next then?

19            MS. KOMATIREDDY: Next your Honor is Aaron  
20    Mascarella.

21            THE COURT: Does that cover the rest of Monday.

22            MS. KOMATIREDDY: It would.

23            THE COURT: What about the elderly woman, she's  
24    not going on Monday.

25            MR. MISKIEWICZ: No. She's go on right after

1 that.

2 THE COURT: What do you mean she'll go on on  
3 Tuesday.

4 MR. MISKIEWICZ: Tuesday, yes, after  
5 Mr. Mascarella, in fact I doubt that Mr. Mascarella will  
6 be done on Monday. Mrs. Kaiser, Mr. Kaiser probably Bryan  
7 Berard after that. I'll inform counsel.

8 THE COURT: Have a good weekend.

9 MR. HALEY: Judge, the Northern Trust bank  
10 records, I did contact Northern Trust, I spoke, left a  
11 voicemail message for the paralegal that accepted the  
12 subpoena. And I know I mentioned that to your law clerk.  
13 I don't what I did with that contact number, it may  
14 require the Court's intercession.

15 THE COURT: If you give the contact number to my  
16 clerk I'll have her call. If they don't respond, I'll  
17 issue an order that someone be available for a conference  
18 call on Tuesday.

19 MR. HALEY: Thank you, sir.

20 THE COURT: All right.

21 (Whereupon, court recessed for the day until  
22 Monday, May 11, 2015 at 9:30 a.m.)  
23  
24  
25

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CROSS-EXAMINATION

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BY MR. HALEY

EXHIBITS:

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Government Exhibit 702, 703, 704, 705 in  
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Government Exhibit 941 and 942 in evidence

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Government Exhibit 506 in evidence

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Defense Exhibit C-29 in evidence

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